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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 364

THE UNITED STATES OF AMERICA, PETITIONER

vs.

ALLIED OIL CORPORATION, P. & M. LIQUOR CORPORATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 18, 1950
CERTIORARI GRANTED DECEMBER 4, 1950

TRANSCRIPT OF RECORD

In the

United States Court of Appeals

For the Seventh Circuit

No. 10132

THE UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

ALLIED OIL CORPORATION,
Defendant-Appellee.

U. S. C. A.-7
FILED
MAR 15 1950
KENNETH F. CLOUTER
CLERK

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

TRANSCRIPT OF RECORD FILED MAR. 3, 1950.
PRINTED RECORD.

In the

United States Court of Appeals

For the Seventh Circuit

No. 10132

THE UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

ALLIED OIL CORPORATION,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

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1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January (it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty and of the Independence of the United States of America, the 174th Year.

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. LaBuy, District Judge.
Honorable Elwyn R. Shaw, District Judge.
Honorable William H. Holly, District Judge.
Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Friday, January 27, 1950.

Court met pursuant to adjournment.

Present: Honorable Michael L. Igoe, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Chester Bowles, Administrator, Office of Price Administration, for and on behalf of the United States,
Plaintiff,
vs.
Allied Oil Corporation of Illinois, a corporation,
Defendant.
} No. 44-C-796

Be It Remembered, that on to-wit, the 10th day of July, 1944, the above-entitled action was commenced by the filing of the following Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44-C-796) * *

COMPLAINT.

1. Plaintiff, as Administrator of the Office of Price Administrator, brings this action for treble damages on behalf of the United States, pursuant to the provisions of Section 205 (e) of the Emergency Price Control Act of 1942 (56 Stat. 23; 50 U. S. C. A. App. 901 (1942), as amended, said Act, as amended, being hereinafter called the Act.

2. Jurisdiction of this action is conferred upon this Court by Section 205 (e) of the Act and by said Section 205 (e) of the Act.

3. At all times hereinafter mentioned, there was in effect, pursuant to the Act, Maximum Price Regulation No. 88 (9 F. R. 1783), as amended, establishing maximum prices for the sale of petroleum products.

4. At all times hereinafter mentioned, the defendant was, and it is, a corporation organized and existing under

the laws of the State of Illinois, with its office and principal place of business in Chicago, Illinois, and it was, and is, engaged in the business of selling, among other things, petroleum products.

5. Between July 10, 1943 and July 10, 1944, which is more than six months after the date of the enactment and approval of the Act, the defendant sold and delivered petroleum products at prices higher than the maximum prices established therefor under the provisions of said Maximum Price Regulation No. 88, as amended.

6. None of the sales referred to in this preceding paragraph were made to purchasers for use or consumption other than in the course of trade or business.

4 7. Defendant demanded and received prices or consideration for the petroleum products sold and delivered, as aforesaid, in excess of the applicable maximum prices established therefor under the provisions of said Maximum Price Regulation No. 88, as amended.

Wherefore, plaintiff demands judgment for and on behalf of the United States against the defendant in the sum of three times the amount by which the prices and consideration received by the defendant, as aforesaid, on said sales and deliveries of petroleum products, exceeded the applicable maximum prices established therefor under the provisions of said Maximum Price Regulation No. 88, as amended.

Alex Elson,
Regional Attorney.

Robert Johnstone,
Acting Chief Enforcement Attorney.

Lewis M. Nowlan,
Enforcement Attorney.

5 And afterwards, to wit, on the 27 day of June, 1946, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

6 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44-C-796) * *

ORDER OF SUBSTITUTION.

On stipulation of the parties hereto by their respective counsel to substitute Paul A. Porter, Administrator of the Office of Price Administration, for Chester Bowles, former Administrator of the Office of Price Administration, as plaintiff in this action, and the Court being fully advised in the premises:

It Is Ordered That said Paul A. Porter, Administrator of the Office of Price Administration, be and is hereby substituted for Chester Bowles as plaintiff in the above entitled matter.

Igoe,
United States District Judge.

7 And afterwards, to wit, on the 23rd day of December, 1946, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

8 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44-C-796) * *

On agreement of the parties by counsel filed herein

It Is Ordered that Philip B. Fleming, Administrator, Office of Temporary Controls, for and on behalf of the United States, be substituted as plaintiff herein in lieu of Paul A. Porter, Administrator, Office of Price Administration, for and on behalf of the United States.

9 And afterwards, to wit, on the 9th day of June, 1947, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

10 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44-C-796) * *

ORDER.

On motion of J. Albert Woll, United States Attorney for the Northern District of Illinois,

It Is Hereby Ordered:

1. That the United States of America is hereby granted leave to substitute as party plaintiff herein:

2. That J. Albert Woll, United States Attorney for the Northern District of Illinois is hereby granted leave to file his appearance herein on behalf of the United States of America.

Enter:

Igoe,
Judge.

Dated at Chicago, Illinois, this 9th day of June, A. D. 1947.

11 And afterwards on, to wit, the 28th day of February, 1950, there was filed in the Clerk's office of said Court a certain Transcript of Proceedings Had on January 6 and January 9, 1950, before Honorable Michael L. Igoe, Judge, in Causes, Numbered, 44 C 796, 44 C 1328, 45 C 740, 46 C 743, 46 C 1334, 46 C 1986, 47 C 523 and 47 C 604 in words and figures following, to wit:

13 United States of America,
Northern District of Illinois,
Eastern Division.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois,
Eastern Division.

UNITED STATES OF AMERICA, *vs.* ALLIED OIL CORPORATION.	Civil Action No. 44 C 786.
UNITED STATES OF AMERICA, *vs.* P & M LIQUOR CORPORATION, a corporation, *et al.*	No. 44 C 1328.
CHESTER BOWLES, Administrator, Office of Price Administration, for and on behalf of the United States, *vs.* NICRO STEEL PRODUCTS, INC., a corporation.	Civil Action No. 45 C 740.
UNITED STATES OF AMERICA, *vs.* HARVEY, INC., a corporation, etc., *et al.*	No. 46 C 743.
UNITED STATES OF AMERICA, *vs.* BEN ZELKEN and MORRIS BELSON d/b/a UNITED POTATO COMPANY.	No. 46 C 1334.
14 UNITED STATES OF AMERICA, *vs.* EVA METNICK, doing business as COUNTY DISTRIBUTORS, HARRY METNICK, MORRIS METNICK, JOE SILVA and JACK METNICK.	Civil Action No. 46 C 1986.
UNITED STATES OF AMERICA, *vs.* HAROLD SIEGLE and JEROME W. ROTH, individually and as co-partners, doing business as ELGIN LUMBER & SUPPLY COMPANY.	No. 47 C 523.
UNITED STATES OF AMERICA, *vs.* JACK STEIN, *et al.*	No. 47 C 604.

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause taken before the Hon. Michael L. Igoe, one of the Judges of said Court, in his court room in the United States Court House at Chicago, Illinois, on Friday, January 6th, 1950, 10:00 o'clock a. m.

Appearances:

Hon. Otto Kerner, Jr., United States District Attorney, By Mr. John P. Lulinski and Mr. Maurice C. Handelman, Assistant District Attorneys, appeared on behalf of the Government;

15 Mr. Thomas J. Downs, appeared on behalf of Allied Oil Corporation;

Mr. Luis Kutner, appeared on behalf of P & M Liquor Corporation, et al.;

Messrs. Mulcahy, Murphy & Dieringer, appeared on behalf of Nicro Steel Products, Inc.;

Messrs. Freeman and Freeman, appeared on behalf of Harvey, Inc., et al.;

Mr. Robert P. Johnstone, appeared on behalf of Ben Zelken and Morris Beison;

Mr. Milton T. Raynor, appeared on behalf of Eva Metnick, et al.;

Messrs. McCarthy, Toomey & Reynolds, appeared on behalf of Harold Siegle and Jerome M. Roth;

Messrs. Sherwin and Sherwin, appeared on behalf of Jack Stein, et al.

16 The Clerk: Case 44 C 1328, United States *versus* P. M. Liquor Company, and various other O. P. A. cases.

Mr. Lulinski: I believe this is one of a series of O. P. A. cases being called before your Honor this morning for trial.

The Court: Yes. What is going to happen in these cases?

Mr. Lulinski: We have had a rather unfortunate experience in the handling of our entire number of O. P. A. cases. You will recall that originally we had some question about substitution and we took up the Wilkie case to the Court of Appeals and the Court of Appeals said that if we did not substitute in six months the cause of action abated, but in that opinion the Court noted the fact that we were the real parties in interest and could be substituted at any time, but Judge Lindley who wrote the opinion said he was not sure as to that point, and as a result of that opinion we have now pending before Judge Sullivan a motion to dismiss the actions on the ground that the United States cannot substitute itself for the Price Administrator and if Judge Sullivan grants that motion it will dismiss not only this action but every other O. P. A. action in the United States.

Our brief is due before Judge Sullivan next Thurs-
17 day. I have been giving quite a lot of consideration to it, along with several other matters, it is in the draft stage in our office and it will be on file before Judge Sullivan very shortly. I feel until such time as that one question is decided this matter should be held up, because if it should be held adversely to us I imagine every defendant should have the benefit of that decision, until such time as we can justify the appropriateness of a different decision in a higher court, and if Judge Sullivan should overrule the motion we can proceed with all of the cases on trial with a sense of security but until that time I do not think it would be worth while to set these cases for trial or for a definite decision until that matter has been taken care of.

We have been in a very unfortunate position as to these matters, your Honor, they have been turned over to us and ever since we have been tied up in a wrangle about our right to proceed.

The Court: Why can't they make that same motion over there and we can dispose of it?

Mr. Lulinski: There is no objection to that, if anyone makes that motion.

The Court: I don't know when that other case will
18 be disposed of.

Mr. Lulinski: Even if that case were decided the other way, there is no objection on our part if one of these defendants make that motion before your Honor. We are not going to oppose such a motion and it might be one way of bringing definite action from the Court. We are not reluctant to prosecute these cases but we are in the position where if the decision is held against us, it would save as from going through a lot of fruitless gestures.

The Court: Here is a case five years old.

Mr. Lulinski: That is true, and I believe I have some 1943 cases on my calendar and they are all being held up on account of the procedural question.

The Court: The whole point involved here is whether the United States may substitute itself in lieu of the preceding O. P. A. officials?

Mr. Lulinski: That is the question to be disposed of before the Court, and there seems to be some intimation in the decision by Judge Lindley that the United States may not be able to substitute itself. One of the points we raised was that we could substitute ourselves at any time as we

raised the question of being the real parties in interest in the Circuit Court of Appeals.

19 The Court: Well, if one of these defendants wants to raise the point that was raised before Judge Sullivan, I will dispose of it.

Mr. Lulinski: I have no objection.

The Court: They ought to have it raised so the record will be worth while.

Mr. Richards: I would like, at this time, to make a motion to dismiss on the ground that it is a five year old case.

The Court: That is not a ground for dismissal even if it was ten years old.

Mr. Richards: I move to dismiss it for want of prosecution.

The Court: The age of the case does not justify its dismissal.

Mr. Richards: But the fact it has been continued and continued.

The Court: As to this matter of continuing, I do not blame you for complaining about it, and I do not think that Mr. Lulinski feels you are unjustified but these things are given to him in his office and they have left him what were the worst ones of the O. P. A. cases, but if the Government has no authority to carry on here, we ought to bring

20 it to an end and if somebody will make that kind of a motion and bring it in in the next few days we will continue all of these cases to that time and dispose of them on that kind of a motion.

I suggest you attorneys who are interested in this matter look into it a little bit and have the motion in proper order.

Mr. Richards: Yes, your Honor, I will.

The Court: It is a very interesting proposition and the Government would like to have it disposed of.

Mr. Lulinski: We would like to have the matter disposed of, too, but our hands are tied on account of that question.

The Court: Which one of you lawyers is going to get up this motion?

Mr. Richards: I will be glad to present that motion.

The Court: What about you, Brother McCarthy, are you going to join in that?

Mr. McCarthy: Yes, your Honor.

The Court: Why don't you folks have a meeting and we will continue this to Monday and you folks have a confer-

ence back in one of the rooms there, or in my library, and decide what kind of a motion you want to bring in on Monday.

21 You get the point, gentlemen. You want the motion worded so that you will have a record to stand on in case the Government goes up.

It is understood all of these O. P. A. cases on call for this morning will be continued until Monday morning, January 9th, 1950, at 10:00 o'clock a. m.

(Whereupon, an adjournment was taken in the above-entitled case to Monday January 9, 1950, at 10:00 o'clock a. m.)

22 IN THE DISTRICT COURT OF THE UNITED STATES.

(Captions—44-C-796-1328, 45-C-740, 46-C-743-1334-1986, 47-C-523-604)

23 TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause taken before the Hon. Michael L. Igoe, one of the Judges of said Court, in his court room in the United States Court House at Chicago, Illinois, on Monday, January 9th, 1950, at 10:00 o'clock a. m.

Appearances:

Same as before.

24 The Clerk: Case No. 44 C 1328, United States *versus* P. M. Liquor Company and others.

The Court: Somebody was going to prepare an appropriate motion in this matter.

Mr. Sherwin: We have prepared a motion, and have examined the record before Judge Sullivan in respect to the case that the District Attorney made reference to.

There is a difference in that case because there there was a motion to substitute as party plaintiff. However, on the substantive question of law the case will stand or fall on the same point, that is that the United States of America is not a party plaintiff in interest or a real party in interest.

In that case briefs have been filed before Judge Sullivan and it is set for oral argument at the end of the month. I have prepared my motion and I think the language is proper to dismiss or abate in accordance with Rule 25-d of the Rules of Civil Procedure.

The ground is that there has been no proper showing made to the Court within six months by the Secretary of Commerce who, we say, is the successor in office to Phillip Fleming, Administrator, Office of Temporary Controls, Office of Price Administration, and therefore the case
25 should be dismissed for that reason.

There was a motion to abate that case, and we got the language from the other case, while there was still the six months period in which the Secretary of Commerce could have come into court so there would have been a proper party plaintiff, so we are in the position that the United States is not the real party in interest and not the proper party plaintiff and more than six months has passed in which the proper party, the Secretary of Commerce, could have come into this court and substituted, and that is the reason for our motion to dismiss.

If your Honor wants, I think we should have briefs in support, we will be glad to furnish them.

The Court: Are you raising a point which, in your judgment, is a sufficient bar to prosecution?

Mr. Sherwin: Yes. I am raising a point which, in my judgment, is a sufficient bar to prosecution and if this motion is allowed the Government cannot come in with anybody else because more than six months have passed when the proper party plaintiff could have substituted.

The Court: Is the record now in shape, with the paper you are now filing, so if the Government appeals the
26 case you can stand on your record?

Mr. Sherwin: I think, based on the record, I have the best possible motion.

The Court: Then we can act on this today and if the Government wants to go up on it, they can go up on it.

Mr. Sherwin: We all have the same motion.

The Court: That is the way I understood it was to be brought up.

Mr. Sherwin: I don't want to be entrapped by the Government, I am not conducting this at all. I just assumed the responsibility due to your Honor's suggestion, and we welcome it, but I don't want the Government to entrap me.

The Court: I think the Government wants some one or all of these cases in shape so that they can go up on them and I gather that from what Mr. Lulinski said, so it would be settled once and for all.

Mr. Handleman: I have been working with Mr. Lulinski on these cases and practically the argument is whether the Secretary of Commerce should bring the suit in his own name.

The Court: Mr. Lulinski takes the position that the United States can act whether acting through the Secretary of Commerce or anyone else.

27 It seems like a narrow point but someone should take it up and see what the answer is.

Mr. Sherwin: Our motion and the case before Judge Sullivan is predicated on the Wilkie case to see if the United States is the real party in interest.

The Court: What is the motion?

Mr. Sherwin: To dismiss or in the alternative to abate the cases in this proceeding.

The Court: Do you have a written order you want signed?

Mr. Sherwin: I will be glad to bring it in. I haven't it with me.

The Court: If you folks are wise, I think you should all do that so the Government will know what the record is.

Mr. Sherwin: So the record will be clear, I will say that it was continued until today but there was no formal motion made. I will hand your Honor a copy.

Mr. Handleman: I don't think that is necessary.

The Court: They are all here.

Mr. Handleman: Is your Honor going to act on this motion?

The Court: I am going to sign this order as soon as it is brought in in each one of these cases, so you will bring in an order, there are eight cases and I under-

28 stand the same motion is being made in all of these cases.

(Which was all of the proceedings had on the hearing of the above-entitled numbered cause.)

29 And on, to wit, the 27th day of January, 1950 came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Motion to Dismiss or Abate in words and figures following, to wit:

30 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44-C-796) * *

MOTION TO DISMISS OR ABATE.

Now comes Allied Oil Corporation, defendant by Thomas J. Downs, its attorney, and moves the court to dismiss, or in the alternative to abate the above entitled cause on the ground that the said cause is not being prosecuted in the name of or by the real party in interest, and that no timely substitution of plaintiff has been made, and in support of said motion states the following:

1. The above entitled cause was filed herein on July 10, 1944 by Chester Bowles as Administrator, Office of Price Administration, for and on behalf of the United States. The complaint is based upon the Emergency Price Control Act of 1942 (56 Stat. 23; 50 U. S. C. 901, et seq.) as amended and extended, and Maximum Price Regulation No. 88 as amended, duly promulgated pursuant to said Act.

2. On June 27, 1946, Paul A. Porter, by order of this court, was substituted for said Chester Bowles as Administrator, party plaintiff.

31 3. On December 23, 1946 Philip B. Fleming, Administrator, Office of Temporary Controls, Office of Price Administration, was substituted for said Paul A. Porter, Administrator, as party plaintiff.

4. On April 23, 1947 the President of the United States promulgated Executive Order 9841 (12 Fed. Reg. 2645) effective June 1, 1947 terminated the Office of Temporary Controls and transferred its functions with certain exceptions to the Secretary of Commerce, which order provided that all functions vested in the Temporary Controls Administrator, with certain exceptions are "transferred to the Secretary of Commerce and shall be performed by him or subject to his direction and control by such officers or agencies of the Department of Commerce as the Secretary may designate. * * *"

5. Thereafter, on June 9, 1947, an order was entered by this Honorable Court substituting United States of America as party plaintiff therein; that at no time during this proceeding has the Secretary of Commerce, the successor to Philip B. Fleming, Temporary Controls Administrator, sought leave to substitute as party plaintiff, and has in fact failed within six months after taking office as such Administrator to satisfactorily show to this Honorable Court that there is substantial need for continuing and maintaining this action and to move to be substituted as plaintiff in conformity with Rule 25d of the Federal Rules of Civil Procedure.

32 6. That Rule 17a of the Federal Rules of Civil Procedure requires that every action shall be prosecuted in the name of the real party in interest, and as appears from the foregoing the real party in interest herein is not the United States of America but is the Secretary of Commerce of the United States who is designated as successor in office to the original plaintiff herein.

Wherefore, defendant moves this Honorable Court that the order of June 9, 1947 appointing United States of America as substitute plaintiff herein be vacated and this cause be dismissed for failure of the Secretary of Commerce to be substituted as party plaintiff within six months from his appointment as such successor Administrator.

Allied Oil Corporation,
defendant,
By Thomas J. Downs,
Its Attorney.

33 And on the same day, to wit, on the 27th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

34 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44-C-796) * *

ORDER.

This Cause coming on to be heard on the motion of the defendant Allied Oil Corporation to dismiss the above entitled cause on the ground that the said cause is not being prosecuted in the name of or by the real party in interest, due notice having been given to all parties of record, and the court having heard arguments of counsel and being fully advised in the premises, Finds That:

1. The above entitled cause was filed herein on July 10, 1944 by Chester Bowles as Administrator, Office of Price Administration, for and on behalf of the United States. The complaint is based upon the Emergency Price Control Act of 1942 (56 Stat. 23; 50 U. S. C. 901, et seq.) as amended and extended, and Maximum Price Regulation No. 88 as amended, duly promulgated pursuant to said Act.

2. On June 27, 1946 Paul A. Porter, by order of this court, was substituted for said Chester Bowles as Administrator, party plaintiff.

35 3. On December 23, 1946 Philip B. Fleming, Administrator, Office of Temporary Controls, Office of Price Administration, was substituted for said Paul A. Porter, Administrator, as party plaintiff.

4. On April 23, 1947 the President of the United States promulgated Executive Order 9841 (12 Fed. Reg. 2645) effective June 1, 1947 terminated the Office of Temporary Controls and transferred its functions with certain exceptions to the Secretary of Commerce, which order provided that all functions vested in the Temporary Controls Administrator, with certain exceptions are "transferred to the Secretary of Commerce and shall be performed by him or subject to his direction and control by such officers or agencies of the Department of Commerce as the Secretary may designate * * *".

5. On June 9, 1947 an order was entered by this court substituting United States of America as party plaintiff herein.

6. At no time during this proceedings has the Secretary of Commerce, the successor to Philip B. Fleming, Temporary Controls Administrator, sought leave to substitute as party plaintiff, and he has in fact failed within six months after taking office to show satisfactorily to the court that there is a substantial need for continuing and maintaining this action and to move to be substituted as plaintiff in conformity with Rule 25d of the Federal Rules of Civil Procedure.

36 7. The United States of America is not the real party in interest and therefore cannot properly prosecute this case, the real party in interest being the Secretary of Commerce of the United States. The said Secretary of Commerce having failed to move to be substituted as plaintiff in conformity with Rule 25d, the above entitled cause is therefore abated.

It Is Therefore Hereby Ordered, Adjudged and Decreed that the order of June 9, 1947 substituting the United States of America as party plaintiff in this cause, be, and the same is hereby vacated, and this cause is hereby dismissed for failure of the Secretary of Commerce to be substituted as party plaintiff within six months from his appointment as such successor Administrator.

Enter:

Igoe,
Judge.

37 And afterwards on, to wit, the 7th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit:

38 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America,
Plaintiff,
vs.
Allied Oil Corporation,
Defendant.
} Civil Action No. 44 C 796.

NOTICE OF APPEAL.

To: Mr. Thomas J. Downs,
Attorney at Law,
135 South La Salle Street,
Chicago, Illinois.

Now comes the United States of America by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, and hereby gives Notice of Appeal by the plaintiff in the above-entitled cause to the United States Court of Appeals for the Seventh Circuit from the final Order entered herein dismissing the cause on January 27, 1950.

Otto Kerner, Jr.,
United States Attorney for the Northern District of Illinois, Eastern Division.

Dated: Chicago, Illinois, this 7th day of February, A. D. 1950.

(Certificate of Mailing Attached Hereto:)

39 United States of America,
Northern District of Illinois. } ss.

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on February 7, 1950, in accordance with Rule 73 (b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to:

Mr. Thomas J. Downs,
135 S. La Salle St.,
Chicago, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 7th day of February, A. D. 1950.

Roy H. Johnson,
Clerk.

(Seal)

By Gizella Butcher,
Deputy Clerk.

40 And afterwards on, to wit, the 10th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Statement of Points Relied on Appeal in words and figures following, to wit:

41 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—44-C-796) * *

STATEMENT OF POINTS RELIED UPON ON APPEAL.

The United States of America relies upon the following points on appeal.

1. The Court below erred in granting the defendant's Motion to Dismiss, and ordering that the cause be dismissed upon the ground that the United States of America is not a proper party plaintiff.

2. The Court below erred in holding that this action could not be conducted and maintained in the name of the United States, the said ruling being contrary to the provisions of Section 901 of Title 50 United States Code, as amended (Act of July 25, 1946, 60 Stat. 664) and Executive Order No. 9842 issued by the President in pursuance of his authority under the Constitution and statutes of the United States, including Title I of the First War Powers Act, 1941.

3. The Court below erred in failing to hold that the United States is the real party in interest, properly substituted as party plaintiff.

Otto Kerner, Jr.,
United States Attorney.

42 And on the same day, to wit, the 10th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Designation of Record in words and figures following, to wit:

43 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—44-C-796) * *

DESIGNATION OF RECORD.

The United States of America, by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, designates the following portions of the record to be contained in the record on the appeal of this cause:

1. Complaint filed July 10, 1944.
2. Order entered June 27, 1946, substituting Paul A. Porter as party plaintiff in lieu of Chester A. Bowles.
3. Order entered December 23, 1946, substituting Philip B. Fleming for and on behalf of the United States in place and in stead of Paul A. Porter as party plaintiff.
4. Order entered June 9, 1947, substituting the United States of America as party plaintiff.
5. Motion to Dismiss or Abate filed January 27, 1950.
6. Order entered January 27, 1950, vacating order of June 9, 1947, and dismissing case.
7. Notice of Appeal.
8. Copy of this Designation.
9. Statement of Points Relied Upon on Appeal.
10. Transcript of proceedings before the Honorable Michael L. Igoe, on January 6, 1950 and January 9, 1950.

Otto Kerner, Jr.,
United States Attorney.

(Affidavit of Mailing attached but not copied.)

44 United States of America, }
Northern District of Illinois. } ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled: United States of America, Plaintiff *vs.* Allied Oil Corporation, Defendant, No. 44-C-796, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 3rd day of March, 1950.

(Seal)

Roy H. Johnson,
Clerk.
By Gizella Butcher,
Deputy Clerk.

HEARD JUN 23 1950 BY 27

TRANSCRIPT OF RECORD

United States Court of Appeals

For the Seventh Circuit

No. 10143

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

[illegible] CORPORATION, et al.,
Defendants-Appellees.

[illegible]

[illegible]

[illegible]

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Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January (it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty and of the Independence of the United States of America, the 174th Year.

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. La Buy, District Judge.
Honorable Elwyn R. Shaw, District Judge.
Honorable William H. Holly, District Judge.
Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Monday, January 9, 1950.

Court met pursuant to adjournment.

Present: Honorable Michael L. Igoe, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT.

For the Northern District of Illinois,

Eastern Division.

Chester A. Bowles, Administrator, Office of Price Administration, for and on behalf of the United States,
Plaintiff,
vs.
P & M Liquor Corp., a corporation, Sidney Prosterman, Leo B. Mitteldorf and Helen Mitteldorf,
Defendants.
} No. 44-C-1328.

Be It Remembered, that, on to-wit, the 1st day of November, 1944, the above-entitled action was commenced by the filing of the following Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division in words and figures following, to-wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44-C-1328) * *

COMPLAINT.

Count I.

1. In plaintiff's judgment, the defendants have engaged in acts and practices which constitute violations of Section 4 (a) of the Emergency Price Control Act of 1942 (56 Stat. 23; 50 U. S. C. A. App. Sec. 904), as amended, hereinafter called the Act, in that they have violated Maximum Price Regulation No. 445 (8 Fed. Reg. 11161), as amended, and Maximum Price Regulation No. 193 (7 Fed. Reg. 6006), as amended. Pursuant to Section 205 (a) of said Act, as amended, plaintiff brings this action to enforce compliance with said Section 4 (a).

2. Jurisdiction of this action is conferred upon this Court by Section 205 (e) of the Act.

3. On August 5, 1942, Maximum Price Regulation No. 193 became effective, and as amended from time to time has, continuously since that date, been in effect, establishing maximum prices for the sale of domestic distilled spirits. On August 14, 1943, Maximum Price Regulation No. 445 became effective, and as amended from time to time has, continuously since that date, been in effect, establishing maximum prices for the sale of distilled spirits and wines.

4. The defendants, P & M Liquor Corp., a corporation, Sidney Prosterman, Leo B. Mitteldorf and Helen Mitteldorf, at all times hereinafter mentioned were, and are, engaged in the business of selling distilled spirits, with their principal place of business in Chicago, Illinois.

5. On November 1, 1943, and on divers dates thereafter, defendants did offer, attempt, and agree to sell, solicit
4 sales of, sell and deliver distilled spirits at prices in excess of the maximum prices established therefor by Maximum Price Regulation No. 445, as originally issued, and as amended, and Maximum Price Regulation No. 193, as originally issued, and as amended.

6. Since the effective date of Maximum Price Regulation No. 445, and Maximum Price Regulation No. 193, defendants have failed to prepare, properly prepare, keep, preserve, and make available books, records, reports, invoices, and statements as required by said regulations, as originally issued and as amended.

Count II.

1. Plaintiff, as Administrator of the Office of Price Administration, brings this action for treble damages on behalf of the United States, pursuant to the provisions of Section 205 (e) of the Emergency Price Control Act of 1942 (56 Stat. 23; 50 U. S. C. A. App. Sec. 925), enacted January 30, 1942, as amended, said Act, as amended, being hereinafter called the Act.

2. Jurisdiction of this action is conferred upon this Court by Section 205 (e) of the Act and by said Section 205 (e) of the Act.

3. Paragraph 3 of Count I is incoporated herein by reference as if fully set forth herein.

4. Paragraph 4 of Count I is incorporated herein by reference as if fully set forth herein.

5. On November 1, 1943, which is more than six months

after the date of the enactment and approval of the Act, and on divers dates thereafter, the defendants sold and delivered distilled spirits at prices in excess of the maximum prices established therefor by Maximum Price Regulation No. 445, as amended, and Maximum Price Regulation No. 193, as amended.

6. None of the sales referred to in Paragraph 5 hereof was made to purchasers for use or consumption other than in the course of trade or business.

7. The aggregate amount by which the prices or consideration, demanded and received by defendants on said sales of distilled spirits, exceeded the applicable maximum prices established therefor by Maximum Price Regulation No. 445, as amended, and Maximum Price Regulation No. 193, as amended, is the sum of $106,954.00. Three times said aggregate amount equals the sum of $320,862.00.

Wherefore, the plaintiff demands:

(1) A preliminary and a final injunction enjoining the defendants, their agents, attorneys, servants, employees, and all persons in active concert or participation with defendants, from directly or indirectly selling, delivering, soliciting the sale of, or offering for sale or delivery, or attempting or agreeing to sell distilled spirits, at prices in excess of the maximum prices established therefor by Maximum Price Regulation No. 445, as amended, Maximum Price Regulation No. 193, as amended, or any other Office of Price Administration regulations, heretofore or hereafter issued establishing maximum prices for the sale of distilled spirits, as said regulations were heretofore or shall hereafter be amended or revised; and

(2) A preliminary and final injunction requiring the defendants to prepare, keep, preserve, and make available for examination, books, records, reports, invoices, and statements as required by Maximum Price Regulation No. 445, as amended, Maximum Price Regulation No. 193, as amended, or any other Office of Price Administration regulations heretofore or hereafter issued establishing maximum prices for the sale of distilled spirits, as said regulations were heretofore or shall hereafter be amended or revised; and

(3) Judgment for and on behalf of the United States, against the defendants, in the sum of $320,862.00, and costs.

(4) Such other, further and different relief as to the Court may seem just and proper.

Dated: November 1, 1944.

Chester A. Bowles, Administrator, Office of Price Administration,
By Homer C. Clay,
Acting District Enforcement Attorney Chicago Metropolitan Area,

Quintin Johnstone,
Chief, Food Enforcement Section Chicago Metropolitan Area.

Robert J. Stastny,
Enforcement Attorney.

Office of Price Administration,
Chicago Metropolitan Area,
222 West Adams Street,
Chicago, Illinois,
Andover 3600.

6 And afterwards, to wit, on the 31st day of May, 1946, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

7 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—44-C-1328) * *

ORDER OF SUBSTITUTION.

This matter coming on to be heard on the motion and stipulation to substitute Paul A. Porter, Administrator of the Office of Price Administration, for Chester Bowles, former Administrator of the Office of Price Administration, as plaintiff in this action, and the Court being fully advised in the premises:

It Is Ordered that said Paul A. Porter, Administrator of the Office of Price Administration, be and is hereby substituted for Chester Bowles as plaintiff in the above entitled matter.

Entered at Chicago, Illinois, this 31st day of May, 1946.

Igoe,
United States District Judge.

O. K. for Defts.:
Luis Kutner.

8 And afterwards, to wit, on the 9th day of January, 1947, being one of the days of the regular December, 1946, term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Walter J. LaBuy, District Judge, appears the following entry, to wit:

9 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—44-C-1328) * *

It Is Ordered by the Court that Philip B. Fleming, Admr., Office of Temporary Controls, for and on behalf of the United States, be and he is hereby substituted as party plaintiff in place and stead of Paul A. Porter, Administrator, etc.

10 And afterwards, to wit, on the 9th day of June, 1947, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

11 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44-C-1328) * *

ORDER.

On motion of J. Albert Woll, United States Attorney for the Northern District of Illinois,

It Is Hereby Ordered:

1. That the United States of America is hereby granted leave to substitute as party plaintiff herein:

2. That J. Albert Woll, United States Attorney for the Northern District of Illinois is hereby granted leave to file his appearance herein on behalf of the United States of America.

Enter:

Igoe,
Judge.

Dated at Chicago, Illinois, this 9th day of June, A. D. 1947.

12 And afterwards on, to wit, the 9th day of January, 1950, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Motion To Dismiss, in words and figures following, to wit:

13 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—44-C-1328) * *

MOTION TO DISMISS.

Now Come P & M Liquor Corporation, a Corporation, (dissolved), Sidney Prosterman, Leo B. Mitteldorf and Helen Mitteldorf, Defendants herein, by their Attorney Luis Kutner, and respectfully move the Court to dismiss the above entitled cause on the ground that the said cause

is not being prosecuted in the name of or by the real party in interest, and in support of said Motion state the following:

I.

On November 1, 1944, by Chester A. Bowles, Office of Price Administration, the above entitled cause was filed herein for and on behalf of the United States. The Complaint is based upon Emergency Control Act of 1942 (56 Stat. 23, U. S. C. A. App. Secs. 904, 925) as amended and Maximum Price Regulations #445 and 193, as amended, duly promulgated pursuant to said Act;

II.

Thereafter on June 26, 1946, an Order was entered by this Court substituting Paul A. Porter for Chester A. Bowles as party Plaintiff herein.

14 III.

Thereafter on January 9, 1947, an Order was entered by this Court substituting Philip B. Fleming, Temporary Controls Administrator, for Paul A. Porter as party plaintiff herein;

IV.

On April 23, 1947, the President of the United States promulgated Executive Order 9841 (12 Fed. Reg. 2645) which, effective June 1st, 1947, terminated the Office of Temporary Controls and transferred its functions with certain exceptions to the Secretary of Commerce, which Order provides that all functions vested in the Temporary Controls Administrator with certain exceptions are "transferred to the Secretary of Commerce" and shall be performed by him, or subject to his direction and control by such officers or agencies of the Department of Commerce as the Secretary may designate. * * *

V.

Thereafter on June 9, 1947, an Order was entered by this Court substituting United States of America as party plaintiff therein; however, at no time during this proceeding has the Secretary of Commerce, the successor to Philip B. Fleming, Temporary Controls Administrator, sought

leave to substitute as party plaintiff, and has in fact failed within six months after taking office to satisfactorily show to the Court that there is a substantial need for continuing and maintaining this action and to move to be substituted as plaintiff in conformity with Rule 25d of the Federal Rules of Civil Procedure;

VI.

That Rule 17A of the Federal Rules of Civil Procedure requires that every action shall be prosecuted in the
15 name of the real party in interest, and as appears from the foregoing the real party in interest herein is not the United States of America but is the Secretary of Commerce of the United States who is designated as successor in office to the original plaintiff herein.

Wherefore Defendants move the Court that the above entitled cause be dismissed.

Luis Kutner,
Attorney for Defendant.

16 And on the same day, to wit, on the 9th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

17 In the District Court of the United States.

* * (Caption—44-C-1328) * *

ORDER.

This cause coming on to be heard on the motion of the Defendants to dismiss the above entitled cause and due notice being served upon parties in interest herein, and the court having considered the contents of the motion, the statement of counsel and being fully advised in the premises doth find:

I.

That it has jurisdiction of the subject matter and the parties hereto;

II.

Rule 17A of the Federal Rules of Civil Procedure requires that every act shall be prosecuted in the name of the real party in interest;

III.

That the real party in interest is not the United States of America, the present Plaintiff, but is the Secretary of Commerce of the United States, pursuant to Executive Order 9841 (12 Fed. Reg. 2645);

That at no time during this proceeding has the Secretary of Commerce of the United States, the successor to Philip B. Fleming, Temporary Controls Administrator, sought leave to substitute as party plaintiff, and has in fact failed within six months after taking office to satisfactorily show to the Court that there is a substantial need for continuing and maintaining this action and to move to be substituted as plaintiff in conformity with Rule 25D of the Federal Rules of Civil Procedure.

It Is Therefore Ordered that the above entitled cause be and is hereby dismissed.

Dated this 9th day of January, A. D. 1950.

Enter:

Igoe,
Judge.

19 And afterwards on, to wit, the 7th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal, in words and figures following, to wit:

20 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America, *Plaintiff*, *vs.* P & M Liquor Corporation, a corporation, *et al.*, *Defendants.*	No. 44-C-1328.

NOTICE OF APPEAL.

To: Luis Kutner, Esquire, 105 West Adams Street, Chicago, Illinois.

Now comes the United States of America, by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, and hereby gives notice of appeal by the plaintiff in the above-entitled cause to the United States Court of Appeals for the Seventh Circuit from the final order entered herein, dismissing the cause on January 9, 1950.

Otto Kerner, Jr.,
United States Attorney.

(Certificate of Mailing Attached Hereto:)

21 United States of America,
Northern District of Illinois. } ss.

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on February 7, 1950, in accordance with Rule 73 (b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to:

Luis Kutner,
105 W. Adams St.,
Chicago, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 7th day of February, A. D. 1950.

Roy H. Johnson,
Clerk,
By Gizella Butcher,
Deputy Clerk.

(Seal)

22 And afterwards on, to wit, the 10th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Statement Of Points, in words and figures following, to wit:

23 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—44-C-1328) * *

STATEMENT OF POINTS RELIED UPON ON APPEAL.

The United States of America relies upon the following points on appeal:

1. The Court below erred in granting the defendants' Motion to Dismiss, and ordering that the cause be dismissed upon the ground that the United States of America is not a proper party plaintiff.

2. The Court below erred in holding that this action could not be conducted and maintained in the name of the United States, the said ruling being contrary to the provisions of Section 901 of Title 50 United States Code, as

amended (Act of July 25, 1946, 60 Stat. 664) and Executive Order No. 9842 issued by the President in pursuance of his authority under the Constitution and statutes of the United States, including Title I of the First War Powers Act, 1941.

3. The Court below erred in failing to hold that the United States is the real party in interest, properly substituted as party plaintiff.

Otto Kerner, Jr.,
United States Attorney.

(Affidavit of Mailing Attached But Not Copied.)

24 And on the same day, to wit, the 10th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Designation Of Record, in words and figures following, to wit:

25 IN THE UNITED STATES DISTRICT COURT.
(Caption—44-C-1328)

DESIGNATION OF RECORD.

The United States of America, by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, designates the following portions of the record to be contained in the record on the appeal of this cause:

1. Complaint filed November 1, 1944.
2. Order entered May 31, 1946, substituting Paul A. Porter as party plaintiff.
3. Order entered January 9, 1947, substituting Philip B. Fleming, Administrator, Office of Temporary Controls, for and on behalf of the United States, as party plaintiff in place and stead of Paul A. Porter.
4. Order entered June 9, 1947, substituting the United States of America as party plaintiff.
5. Motion to dismiss, filed January 9, 1950.
6. Order entered January 9, 1950, dismissing this cause.
7. Notice of Appeal.
8. Copy of this Designation.
9. Statement of Points Relied upon on Appeal.
10. Transcript of proceedings had before the Honorable Michael L. Igoe, on January 6, 1950 and January 9, 1950.

Otto Kerner, Jr.,
United States Attorney.

21 United States of America,
Northern District of Illinois. } ss.

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on February 7, 1950, in accordance with Rule 73 (b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to:

Luis Kutner,
105 W. Adams St.,
Chicago, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 7th day of February, A. D. 1950.

Roy H. Johnson,
Clerk,
By Gizella Butcher,
Deputy Clerk.

(Seal)

22 And afterwards on, to wit, the 10th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Statement Of Points, in words and figures following, to wit:

23 IN THE UNITED STATES DISTRICT COURT.
(Caption—44-C-1328)

STATEMENT OF POINTS RELIED UPON ON APPEAL.

The United States of America relies upon the following points on appeal:

1. The Court below erred in granting the defendants' Motion to Dismiss, and ordering that the cause be dismissed upon the ground that the United States of America is not a proper party plaintiff.

2. The Court below erred in holding that this action could not be conducted and maintained in the name of the United States, the said ruling being contrary to the provisions of Section 901 of Title 50 United States Code, as

amended (Act of July 25, 1946, 60 Stat. 664) and Executive Order No. 9842 issued by the President in pursuance of his authority under the Constitution and statutes of the United States, including Title I of the First War Powers Act, 1941.

3. The Court below erred in failing to hold that the United States is the real party in interest, properly substituted as party plaintiff.

Otto Kerner, Jr.,
United States Attorney.

(Affidavit of Mailing Attached But Not Copied.)

24 And on the same day, to wit, the 10th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Designation Of Record, in words and figures following, to wit:

25 IN THE UNITED STATES DISTRICT COURT.

(Caption—44-C-1328)

DESIGNATION OF RECORD.

The United States of America, by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, designates the following portions of the record to be contained in the record on the appeal of this cause:

1. Complaint filed November 1, 1944.
2. Order entered May 31, 1946, substituting Paul A. Porter as party plaintiff.
3. Order entered January 9, 1947, substituting Philip B. Fleming, Administrator, Office of Temporary Controls, for and on behalf of the United States, as party plaintiff in place and stead of Paul A. Porter.
4. Order entered June 9, 1947, substituting the United States of America as party plaintiff.
5. Motion to dismiss, filed January 9, 1950.
6. Order entered January 9, 1950, dismissing this cause.
7. Notice of Appeal.
8. Copy of this Designation.
9. Statement of Points Relied upon on Appeal.
10. Transcript of proceedings had before the Honorable Michael L. Igoe, on January 6, 1950 and January 9, 1950.

Otto Kerner, Jr.,
United States Attorney.

26 United States of America,
Northern District of Illinois. } ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing together with the Transcript of Proceedings incorporated and certified this day in the Transcript of Record on Appeal, in the cause entitled: United States of America, Plaintiff *vs.* Allied Oil Corporation, Defendant, No. 44-C-796, to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled P & M Liquor Corporation, a corporation, et al., Defendants, No. 44-C-1328, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 3rd day of March, 1950.

Roy H. Johnson,
Clerk,
By Gizella Butcher,
Deputy Clerk.

(Seal)

47

TRANSCRIPT OF RECORD

In the

United States Court of Appeals

For the Seventh Circuit

No. 10134

THE UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

NICBO STEEL PRODUCTS, INC.,
Defendant-Appellee.

U. S. C. A.—7
FILED
MAR 15 1950
KENNETH J. CARRICK
CLERK

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

TRANSCRIPT OF RECORD FILED MAR. 3, 1950.
PRINTED RECORD.

In the

United States Court of Appeals

For the Seventh Circuit

No. 10134

THE UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

NICRO STEEL PRODUCTS, INC.,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

USCA 2204 The Gunthorp-Warren Printing Co., Chicago—3-14-50—50

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Placita. 1

1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January (it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty and of the Independence of the United States of America, the 174th Year.

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. LaBuy, District Judge.
Honorable Elwyn R. Shaw, District Judge.
Honorable William H. Holly, District Judge.
Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Monday, January 9, 1950.

Court met pursuant to adjournment.

Present: Honorable Michael L. Igoe, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Chester Bowles, Administrator, Office of Price Administration, for and on behalf of the United States,
Plaintiff,
vs.
Nicro Steel Products, Inc., a corporation,
Defendant.
No. 45 C 740.

Be It Remembered, that on to-wit, 21st day of May, 1945, the above-entitled action was commenced by the filing of the following Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—45-C-740) * *

COMPLAINT.

Count I.

1. In the judgment of the Administrator defendant is engaged in acts and practices which constitute violations of Section 4 (a) of the Emergency Price Control Act of 1942 (56 Stat. 23, 50 U. S. C. A., App. Sec. 901 et seq., as amended by the Stabilization Extension Act of 1944, 58 Stat. 632) in that defendant has violated the provisions of Maximum Price Regulation No. 188 (7 F. R. 5872) as amended, hereinafter referred to as MPR 188, and therefore, pursuant to Section 205 (a) of the Act, the Price Administrator brings this action to enforce compliance with Section 4 (a) of the said Act.

2. Jurisdiction of this action is conferred upon the Court by Section 205 (c) of the Act.

3. At all times mentioned herein there has been in effect MPR 188 issued pursuant to the Act which establishes manufacturers' maximum prices for sales of the commodities hereinafter described.

4. At all times hereinafter mentioned the defendant has been a corporation conducting its business within the jurisdiction of this Court with its principal place of business at 1308 Elston Avenue, in the City of Chicago, County of Cook and State of Illinois within the district and division aforesaid.

4 5. Since August 1, 1942 defendant has been and is now engaged in the manufacture and sale at wholesale of various and sundry pots, skillets, sauce-pans, and other kitchen utensils for which, upon sale by it, maximum prices are and have been established by MPR 188 as amended. Said kitchen utensils are hereinafter referred to as "commodities."

6. Defendant has violated provisions of MPR 188 in the following particulars:

A. Defendant has failed and neglected to prepare on or before July 1, 1942, and thereafter keep for examination a statement, hereinafter referred to as "base period statement," showing the highest prices defendant charged for said commodities delivered by it during March 1942, its offering prices for delivery of said commodities during said month, as appropriate description or identification of each such commodity, and all its customary allowances, discounts and other price differentials, as required by Section 1499.11 of the General Maximum Price Regulation (7 F. R. 3153) which by Section 1499.151 of MPR 188 is incorporated into and made a part of MPR 188.

B. Defendant has failed and neglected to prepare, keep and make available for examination by the Office of Price Administration records showing as precisely as possible the basis upon which defendant determined maximum

5 prices in accordance with the pricing provisions of the aforesaid Regulations for said commodities manufactured and sold by it after May 11, 1942, as required by Section 1499.12 of the General Maximum Price Regulation which by Section 1499.151 of MPR 188 is incorporated into and made a part of MPR 188.

C. Defendant has failed to compute and report to the Office of Price Administration, Washington, D. C., maximum prices as required by Sections 1499.156 and 1499.157 of MPR 188, or to submit to said Office reports applying for

specific authorization for maximum prices as required by Section 1499.158 of MPR 188.

7. Defendant has sold, offered to sell, is now selling and continues to offer and sell said commodities to wholesalers and retailers throughout the United States at prices in excess of those established by said MPR 188, as amended, and will continue to do so unless restrained by this Court.

Count II.

8. Plaintiff, as Administrator of the Office of Price Administration, brings this action for treble damages on behalf of the United States, pursuant to the provisions of Section 205 (e) of the Act.

9. Jurisdiction of this action is conferred upon this Court by Sections 205 (e) and (e) of the Act.

10. Paragraphs 3, 4 and 5 of Count I are incorporated herein by reference as if fully set forth herein.

11. For one year prior to the filing of this complaint the defendant has sold and delivered table and floor lamps and lamp shades at prices in excess of the maximum prices established therefor by MPR 188 as amended.

12. None of the sales referred to in paragraph 11 hereof were made to purchasers for use or consumption other than in the course of its trade and business.

13. The defendant, during the year immediately preceding the filing of this complaint, has demanded and received prices and consideration for said above described commodities in excess of the applicable maximum prices established by MPR 188, as amended.

Wherefore, the Administrator demands:

I. A preliminary and final injunction directed to the defendant, defendant's agents, employees, servants and attorneys, and all other persons in active concert or participation with any of them, jointly and severally:

A. Directing it forthwith,

1. To prepare and keep for examination by any person during ordinary business hours a base period statement as required by Section 1499.11 (b) of the General Maximum Price Regulation, as incorporated into and made a part of MPR 188; and

2. To prepare, keep and make available for examination by the Office of Price Administration records, hereinafter called "current pricing records," required by Section 1499.12 of the General Maximum Price Regulation as incor-

porated into and made a part of MPR 188, showing as precisely as possible the basis upon which defendant determined maximum prices in accordance with the pricing
7 provisions of said Regulations for all commodities sold by defendant after May 11, 1942; and

3. To keep and make available for examination by the Office of Price Administration records of the same kind as it customarily kept, relating to the prices which it charged for commodities sold by it after May 11, 1942, as required by Section 1499.12 of the General Maximum Price Regulation as incorporated and made a part of MPR 188; and

4. To furnish, on or before May 30, 1945, said base period statement and current pricing records, prepared in accordance with Section 1499.151 of MPR 188 to Gilbert Thurston, Price Specialist of the Office of Price Administration, Chicago Metropolitan District Office, Room 514, 222 W. Adams Street, Chicago, Illinois; and

5. To compute and report to the Office of Price Administration, Washington, D. C., as required by Sections 1499.156 and 1499.157 of MPR 188, the maximum prices for commodities manufactured and sold by defendant which were required to be priced under Sections 1499.156 and 1499.157 of MPR 188; and

6. To submit to the Office of Price Administration, Washington, D. C., a report applying for specific authorization of the maximum price, as required by Section 1499.158 of MPR 188, for commodities manufactured and sold by defendant for which the maximum prices cannot be established under Sections 1499.155, 1499.156 or 1499.157 of MPR 188.

8 B. Restraining it from engaging in or causing any of the following acts or omissions to act:

1. Selling, delivering or offering to sell or deliver said commodities unless and until defendant first complies with the directions contained in demands designated "1", "2", "3", "4", "5", and "6" under "A" immediately above; and

2. Directly or indirectly selling, delivering or offering to sell or deliver said commodities at prices in excess of the prices permitted by MPR 188 as heretofore or hereafter amended or any other regulation promulgated by the Office of Price Administration governing the maximum prices of said commodities; and

3. Doing or omitting to do any other act in violation of MPR 188, as heretofore or hereafter amended; and

4. Offering, soliciting, attempting or agreeing to do any of the foregoing.

II. Judgment for and on behalf of the United States against the defendant, Nicro Steel Products, Inc., a corporation, in the sum of three times the amount by which the prices and consideration received by the defendant exceeded the applicable maximum prices established by MPR 188, as amended, during the year immediately preceding the filing of this complaint, and thereafter until final judgment.

III. Such other order, decree or judgment as the Court may deem just and proper to carry out the purposes of the Act, as amended.

Homer C. Clay,
District Enforcement Attorney.

Edward H. Hatton,
Enforcement Attorney.

Jerome H. Dray,
Enforcement Attorney.

And afterwards, to wit, on the 14th day of August, 1946, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES.
(Caption—45-C-740)

ORDER OF SUBSTITUTION OF PUBLIC OFFICER.

This cause came on to be heard on the motion of Paul A. Porter that he, as Administrator of the Office of Price Administration, be substituted as the party-plaintiff in this cause in the place of Chester Bowles, Administrator, Office of Price Administration, his predecessor in office, and it appearing to the court that the said Chester Bowles has resigned as Administrator of the Office of Price Administration, and the said Paul A. Porter has duly succeeded to said office, and is now Administrator of the Office of Price Administration, and that there is substantial need for continuing and maintaining this action against the said defendant herein,

It Is Ordered that Paul A. Porter, Administrator of the Office of Price Administration, be substituted as plaintiff herein in place of said Chester Bowles, without prejudice to the proceedings already had in this cause.

Entered this 14th day of August, 1946.

Igoe,
District Judge.

12 And afterwards, to wit, on the 21st day of May, 1947, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

13 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—45-C-740) * *

It Is Ordered by the Court that Philip B. Fleming, Administrator, Office of Temporary Controls, for and on behalf of the United States, be and he is hereby substituted as party plaintiff herein, in place and stead of Paul A. Porter, Administrator, etc.

14 And afterwards, to wit, on the 9th day of June, 1947, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

15 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—45-C-740) * *

ORDER.

On motion of J. Albert Woll, United States Attorney for the Northern District of Illinois,

It Is Hereby Ordered:

1. That the United States of America is hereby granted leave to substitute as party plaintiff herein;

2. That J. Albert Woll, United States Attorney for the Northern District of Illinois is hereby granted leave to file his appearance herein on behalf of the United States of America.

Enter:

Igoe,
Judge.

Dated at Chicago, Illinois, this 9th day of June, A. D. 1947.

16 And afterwards on, to wit, the 9th day of January, 1950, came the Defendant by its attorneys and filed in the Clerk's office of said Court its certain Motion to Dismiss or Abate in words and figures following, to wit:

17 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—45-C-740) * *

MOTION TO DISMISS OR ABATE.

Now comes Nicro Steel Products, Inc., a corporation, by Mulcahy, Murphy & Dieringer, its attorneys, and moves the Court to dismiss, or in the alternative, to abate the above entitled cause on the grounds that the said cause is not being prosecuted in the name of, or by the real party in

interest, and in support of said motion, states the following:

1. The above entitled cause was filed herein on December 21, 1945, by Chester Bowles, Administrator, for and on behalf of the United States; the complaint is based upon the Emergency Price Control Act of 1942 (56 Stat. 23) 50 U. S. C. 901 etc.) as amended and extended and Maximum Price Regulation 540, as amended, duly promulgated, pursuant to said Act.

2. On April 25, 1947, the President of the United States promulgated Executive Order 9841 (12 Fed. Reg. 2645), which effective June 1, 1947, terminated the Office of Temporary Control and transferred its functions, with certain exceptions, to the Secretary of Commerce, which order provides that all functions vested in the Temporary Controls Administrator, with certain exceptions, are "'transferred to the Secretary of Commerce and shall be performed by him or subject to his direction and control by such officers or agencies of the Department of Commerce as the Secretary may designate * * *".

18 3. Thereafter, on January 10, 1947, an order was entered by this court substituting the United States of America as party plaintiff therein; however, at no time during this proceeding, has the Secretary of Commerce, the successor to Chester Bowles, Administrator, Office of Price Administration, sought leave to substitute as party plaintiff and has in fact failed within six (6) months after taking office, to satisfactorily show to the court that there is a substantial need for continuing and maintaining this action and to move to be substituted as plaintiff, in conformity with Rule 25B of Federal Rules of Civil Procedure.

4. That Rule 17A of the Federal Rules of Civil Procedure requires that every action shall be prosecuted in the name of the real party in interest and as appears from the foregoing, the real party in interest herein is not the United States of America but is the Secretary of Commerce of the United States who is designated as successor in office in the original plaintiff herein.

Wherefore, defendants move the court that the above entitled cause be dismissed, or in the alternative, be abated.

Nicro Steel Products, Inc., a corporation,
defendant,
By Mulcahy, Murphy & Dieringer,
Its Attorneys.
33 North La Salle Street,
Financial 6-3355.

19 And on the same day, to wit, on the 9th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

20 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—45-C-740) * *

ORDER.

This cause coming on to be heard on the motion of Nicro Steel Products, Inc., by Mulcahy, Murphy & Dieringer, its attorneys, to dismiss or abate the above entitled cause, and the Court having examined the motion and heard the arguments of Counsel for both sides and being fully advised in the premises:

It Is Hereby Ordered, that the above cause be dismissed for failure of the Secretary of Commerce, as the real party in interest to substitute as party plaintiff herein, within the time fixed by the Statute.

Enter:

Igoe,
Judge.

21 And afterwards on, to wit, the 7th day of February, 1950, came the Plaintiff, United States of America by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit:

22 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Chester Bowles, Administrator, Office of Price Administration, for and on behalf of the United States, *Plaintiff*, *vs.* Nicro Steel Products, Inc., a Corporation, *Defendant*.	Civil Action No. 45 C 740.

NOTICE OF APPEAL.

To: Mulcahy, Murphy & Dieringer,
Attorneys at Law,
33 North La Salle Street,
Chicago, Iilinois.

Now comes the United States of America by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, and hereby gives Notice of Appeal by the plaintiff in the above-entitled cause to the United States Court of Appeals for the Seventh Circuit from the final Order entered herein dismissing the cause on January 9, 1950.

Otto Kerner, Jr.,
United States Attorney for the Northern District of Illinois, Eastern Division.

Dated: Chicago, Illinois, this 7th day of February, A. D. 1950.

(Certificate of Mailing Attached Hereto:)

23 United States of America,
Northern District of Illinois. } ss.

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on Feb. 7, 1950, in accordance with Rule 73 (b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to:

Mulcahy, Murphy & Dieringer,
33 N. La Salle St.,
Chicago, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 7th day of Feb., A. D. 1950.

Roy H. Johnson,
Clerk.
(Seal)
By Gizella Butcher,
Deputy Clerk.

24 And afterwards on, to wit, the 10th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Statement of Points in words and figures following, to wit:

25 IN THE UNITED STATES DISTRICT COURT.
(Caption—45-C-740)

STATEMENT OF POINTS RELIED UPON ON APPEAL.

The United States of America relies upon the following points on appeal.

1. The Court below erred in granting the defendant's Motion to Dismiss, and ordering that the cause be dismissed upon the ground that the United States of America is not a proper party plaintiff.

2. The Court below erred in holding that this action could not be conducted and maintained in the name of the United States, the said ruling being contrary to the pro-

visions of Section 901 of Title 50 United States Code, as amended (Act of July 25, 1946, 60 Stat. 664) and Executive Order No. 9842 issued by the President in pursuance of his authority under the Constitution and statutes of the United States, including Title I of the First War Powers Act, 1941.

3. The Court below erred in failing to hold that the United States is the real party in interest, properly substituted as party plaintiff.

Otto Kerner, Jr.,
United States Attorney.

(Certificate of Mailing Attached But Not Copied:)

26 And on the same day, to wit, the 10th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Designation of Record in words and figures following, to wit:

27 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—45-C-740) * *

DESIGNATION OF RECORD.

The United States of America, by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, designates the following portions of the record to be contained in the record on the appeal of this cause:

1. Complaint filed May 21, 1945.
2. Order entered August 14, 1946, substituting Paul A. Porter for Chester A. Bowles as party plaintiff.
3. Order entered May 21, 1947, substituting Philip B. Fleming as party plaintiff.
4. Order entered June 9, 1947, substituting the United States of America as party plaintiff.
5. Motion to dismiss or abate, filed January 9, 1950.
6. Order entered January 9, 1950, dismissing this cause.
7. Notice of Appeal.
8. Copy of this Designation.
9. Statement of Points Relied Upon on Appeal.
10. Transcript of proceedings had before the Honorable M. L. Igoe on January 6, 1950 and January 9, 1950.

Otto Kerner, Jr.,
United States Attorney.

28 United States of America,
Northern District of Illinois. } ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing, together with the Transcript of Proceedings, incorporated and certified this day, in the Transcript of Record on Appeal in the cause entitled: United States of America, Plaintiff *vs.* Allied Oil Corporation, Defendant, No. 44-C-796, to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled: United States of America, Plaintiff *vs.* Nicro Steel Products, Inc., a corporation, Defendant, No. 45-C-740, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 3rd day of March, 1950.

Roy H. Johnson,
Clerk.

(Seal)

By Gizella Butcher,
Deputy Clerk.

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TRANSCRIPT OF RECORD

In the

United States Court of Appeals

For the Seventh Circuit

No. 10135

THE UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

HARVEY, INC., DOING BUSINESS AS HARVEY, INC., AND HARVEY COMPANY,
Defendants-Appellees.

U. S. C. A.-7
FILED
MAR 15 1950
KENNETH J. CARROLL
CLERK

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

TRANSCRIPT OF RECORD FILED MAR. 3, 1950.
PRINTED RECORD.

In the

United States Court of Appeals

For the Seventh Circuit

No. 10135

THE UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

HARVEY, INC., DOING BUSINESS AS HARVEY, INC., AND HARVEY COMPANY,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

USCA 2204 The Gunthorp-Warren Printing Co., Chicago—3-14-50—50

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1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January (it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty and of the Independence of the United States of America, the 174th Year.

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. LaBuy, District Judge.
Honorable Elwyn R. Shaw, District Judge.
Honorable William H. Holly, District Judge.
Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Monday, January 9, 1950.

Court met pursuant to adjournment.

Present: Honorable Michael L. Igoe, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Paul A. Porter, as Administrator of the Office of Price Administration, for and on Behalf of the United States,
Plaintiff,
vs.
Harvey, Inc., a corporation, doing business as Harvey, Inc., and Harvey Company,
Defendants.
No. 46-C-743.

Be It Remembered, that on to-wit, the 26th day of April, 1946, the above-entitled action was commenced by the filing of the following Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—46-C-743) * *

COMPLAINT.

Count I.

1. In plaintiff's judgment, the defendant has engaged in acts and practices which constitute violations of Section 4 (a) of the Emergency Price Control Act of 1942 (56 Stat. 23; U. S. C. A. App. Sec. 904), as amended, hereinafter called the Act, in that the defendant has violated Second Revised Maximum Price Regulation No. 215 (8 Fed. Reg. 14145), as amended, General Maximum Price Regulation (7 Fed. Reg. 3153), as amended, and Order No. G-1 issued under the authority of General Order No. 61, as amended.

2. Jurisdiction of this action is conferred upon this Court by Section 205 (e) of the Act.

3. On October 21, 1943, Second Revised Maximum Price Regulation No. 215 became effective, and as amended from time to time, has, continuously since that date, been in effect, establishing maximum prices and invoicing and record keeping provisions with respect to Distribution Yard sales of softwood lumber and hardwood flooring. On May 11, 1942, General Maximum Price Regulation became effective, and as amended from time to time has, continuously since that date, been in fact, establishing maximum prices for the sale of used lumber. On April 2, 1945, General Order No. 61 became effective, and as amended from time to time has, continuously since that date been in effect and authorizes any Regional Administrator of the Office of Price Administration, and any District Director who may be authorized by appropriate Regional Administrator, to issue and put into effect orders establishing area dollars-and-cents ceiling prices for sales of used lumber in any area or locality within his jurisdiction. General Order No. 61 further provides that no person may sell or receive any used lumber at prices higher than the dollars-and-cents ceiling prices fixed by any order issued pursuant to the said General Order No. 61. Pursuant to the authority
4 vested in him and the provisions of General Order No. 61, R. E. Walters, Regional Administrator, Region VI, Office of Price Administration issued Order No. G-1 which became effective on January 1, 1946, and as amended from time to time has continuously since that date, been in effect, establishing maximum prices for sales of used lumber in the Chicago area.

4. The defendant, Harvey, Inc. a corporation, doing business as Harvey, Inc., and Harvey Company, with its office and principal place of business in Chicago, Illinois, was and is at all times hereinafter mentioned, engaged in the business of selling the softwood lumber products and hardwood flooring and used lumber covered by Section Revised Maximum Price Regulation No. 215, as amended, General Maximum Price Regulation, as amended, and Order No. G-1 issued under the authority of General Order No. 61, as amended, and was and is at all times hereinafter mentioned, subject to the provisions of the said Regulation and the Act.

5. Since the effective date of the Second Revised Maximum Price Regulation No. 215, the defendant has failed to prepare, properly prepare, keep, preserve, issue and make available for examination by the Office of Price Administra-

tion, books, records, reports, invoices, and statements as required by said regulation, as originally issued and as amended. Since the effective dates of General Maximum Price Regulation and Order No. G-1, issued under the authority of General Order No. 61, the defendant has failed to prepare, properly prepare, keep, preserve, issue and make available for examination by the Office of Price Administration, books, records, reports, invoices and statements as required by General Maximum Price Regulation and Order No. G-1 issued under the authority of General Order No. 61, as originally issued and as amended.

6. On April 26, 1945, and on divers dates thereafter, the defendant did offer, attempt and agree to sell, solicit sales, sell and deliver softwood lumber products and hardwood flooring and used lumber at prices in excess of the maximum prices established therefor by Second Revised Maximum Price Regulation, No. 215, as amended, General Maximum Price Regulation, as amended, and Order No. G-1, as amended, issued under the authority of General Order No 61, as amended.

Wherefore, the Plaintiff demands:

1. A preliminary and final injunction, or order in the nature thereof, enjoining and requiring the defendant, its officers, agents, servants, employees, attorneys and all persons in active concert or participation with the defendant to prepare, keep, preserve, issue and make available for examination by the Office of Price Administration, books, records, reports, invoices and statements as required by Second Revised Maximum Price Regulation No. 215, as amended, General Maximum Price Regulation, as amended, and Order No. G-1, as amended, issued under the authority of General Order No. 61, as amended, or any other Office of Price Administration regulations and orders, heretofore or hereafter issued, establishing maximum prices for the sales of softwood lumber and hardwood flooring and used lumber, as said regulation and orders were heretofore or shall hereafter be, amended or revised.

2. A preliminary and final injunction, or order in the nature thereof, enjoining the defendant, its officers, agents, servants, employees and all persons in active concert or participation with defendant, from directly or indirectly selling, delivering, offering, soliciting, or attempting to sell or deliver softwood lumber products and hardwood flooring and used lumber at prices in excess of the maximum prices established by Second Revised Maximum Price Regu-

lation No. 215, as amended, General Maximum Price Regulation, as amended, and Order No. G-1, as amended, issued under the authority of General Order No. 61, as amended, and any other Office of Price Administration regulations or orders heretofore, or hereafter issued, establishing maximum prices for the sale of softwood lumber products and hardwood flooring, as said regulations or orders, were heretofore or shall hereafter be amended or revised.

3. Judgment for and on behalf of the United States against the defendant for the costs herein.

4. Such other, further or different relief as to the Court may seem just and proper.

Count II.

1. The Plaintiff, as Administrator of the Office of Price Administration, brings this action for treble damages on behalf of the United States pursuant to the provisions of Section 205 (c) of the Emergency Price Control Act of 1942 (56 Stat. 23; 50 U. S. C. A. App. Sec. 225), enacted January 30, 1942, as amended, said act, as amended, being hereinafter referred to as the Act.

2. Jurisdiction of the action is conferred upon this Court by Section 205 (c) of the Act, and by Section 205 (e) of the Act.

3. Plaintiff repeats and re-alleges paragraphs 3 and 4 of Count I, as paragraphs 3 and 4 of this Count.

5. On April 26, 1945, which is more than six months after the date of the enactment and approval of the Act, and on divers dates thereafter, the defendant sold and delivered softwood lumber products and hardwood flooring and used lumber at prices in excess of the maximum prices established therefore by Second Revised Maximum Price Regulation No. 215, as amended, General Maximum Price Regulation, as amended, and Order No. G-1, as amended, issued under the authority of General Order No. 61, as amended.

6. None of the sales or deliveries referred to in paragraph 5 hereof were made to purchasers other than in the course of trade or business.

Wherefore, the Plaintiff demands:

1. Judgment for and on behalf of the United States against the defendant in the sum of three times the amount by which the softwood lumber products and hardwood flooring and used lumber sold and delivered by the defendant

since April 26, 1945, exceeded the maximum prices established therefore by Second Revised Maximum Price Regulation No. 215, as amended, General Maximum Price Regulation, as amended, and Order No. G-1, as amended, issued under the authority of General Order No. 61, as amended.

2. Judgment for and on behalf of the United States against the defendant for the costs herein.

3. Such other, further and different relief as to the Court may seem just and proper.

Dated: April 26, 1946.

Paul A. Porter,
Administrator, Office of Price Administration.
By Homer C. Clay,
District Enforcement Attorney.

7 William Corrigan,
Chief Litigation Attorney.
*Robert J. Stastny,
Enforcement Attorney.

Office of Price Administration
Chicago Metropolitan Area
222 W. Adams Street
Chicago 6, Illinois
Andover 3600

* To be served with all notices and papers.

8 And afterwards, to wit, on the 15th day of May, 1947, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

9 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—46-C-743) * *

It Is Ordered by the Court that Philip B. Fleming, Administrator, Office of Temporary Controls, Office of Price Administration, for and on behalf of the United States, be and he is hereby substituted as party plaintiff in place and stead of Paul A. Porter, Administrator, etc.

10 And afterwards, to wit, on the 9th day of June, 1947, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

11 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—46-C-743) * *

ORDER.

On motion of J. Albert Woll, United States Attorney for the Northern District of Illinois,

It Is Hereby Ordered:

1. That the United States of America is hereby granted leave to substitute as party plaintiff herein;
2. That J. Albert Woll, United States Attorney for the Northern District of Illinois, is hereby granted leave to file his appearance herein on behalf of the United States of America.

Enter:

Igoe,
Judge.

Dated at Chicago, Illinois, this 9th day of June, A. D. 1947.

12 And afterwards on, to wit, the 9th day of January, 1950, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Motion To Dismiss Or Abate, in words and figures following, to wit:

13 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—46-C-743) * *

MOTION TO DISMISS OR ABATE.

Now Comes Harvey, Inc., a corporation doing business as Harvey, Inc., and Harvey Company, by Freeman & Freeman, its attorneys, and moves the court to dismiss, or in the alternative to abate the above entitled cause on the ground that the said cause is not being prosecuted in the name of or by the real party in interest, and in support of said motion state the following:

1. The above entitled cause was filed herein on April 26, 1946, by Paul A. Porter, as Administrator of the Office of Price Administration for and on behalf of the United States. The complaint is based upon the Emergency Price Control of 1942 (56 Stat. 23; 50 U. S. C. 901, et seq.) as amended and extended, and Maximum Price Regulation 540 as amended, duly promulgated pursuant to said Act.

2. On April 23, 1947 the President of the United States promulgated Executive Order 9841 (12 Fed. Reg. 2645) which effective June 1, 1947, terminated the Office of Temporary Controls and transferred its functions with certain exceptions to the Secretary of Commerce, which order

14 provides that all functions vested in the Temporary Controls, Administrator, with certain exceptions are "transferred to the Secretary of Commerce and shall be performed by him or subject to his direction and control by such officers or agencies of the Department of Commerce as the Secretary may designate * * *".

3. Thereafter, on June 9, 1947, an order was entered by this Court substituting United States of America as party plaintiff therein: however, at no time during this proceeding has the Secretary of Commerce, the successor to Paul A. Porter, Administrator of the Office of Price Administration, sought leave to substitute as party plaintiff, and has in fact failed within six months after taking office to satisfactorily show to the Court that there is a substantial need

for continuing and maintaining this action and to move to be substituted as plaintiff in conformity with Rule 25d of the Federal Rules of Civil Procedure.

4. That Rule 17a of the Federal Rules of Civil Procedure requires that every action shall be presented in the name of the real party in interest, and as appears from the foregoing the real party in interest herein is not the United States of America but is the Secretary of Commerce of the United States who is designated as successor in office to the original plaintiff herein.

Wherefore, defendant moves the Court that the above entitled cause be dismissed or in the alternative abated.

Harvey, Inc., a corporation, doing business as Harvey, Inc., and Harvey Company,

Defendant,

By Freeman & Freeman,
Its Attorneys,
1 North La Salle Street,
St. 2-0339.
Earl Freeman.

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15 And on the same day, to wit, on the 9th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

16 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—46-C-743) * *

ORDER.

This Cause coming on to be heard upon the motion of Harvey, Inc., a corporation, doing business as Harvey, Inc., and Harvey Company, by its attorneys, Freeman & Freeman, for an order to dismiss or in the alternative to abate the above entitled cause, and a written motion having been presented setting forth the reasons therefor, and the court being fully advised in the premises,

It Is Hereby Ordered that the said motion of defendant be and it is hereby sustained and that this cause be and it is hereby dismissed.

Enter:

Igoe,
Judge.

Dated: Chicago, Illinois, January 9th, 1950.

17 And afterwards on, to wit, the 7th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Notice Of Appeal, in words and figures following, to wit:

18 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America, *Plaintiff,*
vs.
Harvey, Inc., a corporation, etc., *et al.*, *Defendants.*
No. 46-C-743.

NOTICE OF APPEAL.

To: Freeman and Freeman, 1 North La Salle Street, Chicago, Illinois:

Now comes the United States of America, by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, and hereby gives notice of appeal by the plaintiff in the above-entitled cause to the United States Court of Appeals for the Seventh Circuit from the final order entered herein, dismissing the cause on January 9, 1950.

Otto Kerner, Jr.,
United States Attorney.

(Certificate of Mailing Attached Hereto.)

19 United States of America,
Northern District of Illinois. } ss.

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on February 7, 1950, in accordance with Rule 73 (b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to:

Freeman & Freeman,
1 N. La Salle St.,
Chicago, Illinois.

In Testimony Whereof, I have hereunto subsqcribed my name and affixed the seal of the aforesaid Court at Chicago, this 7th day of February, A. D. 1950.

Roy H. Johnson,
Clerk,
(Seal) By Gizella Butcher,
Deputy Clerk.

20 And afterwards on, to wit, the 10th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Statement Of Points, in words and figures following, to wit:

21 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—46-C-743) * *

STATEMENT OF POINTS RELIED UPON ON APPEAL.

The United States of America relies upon the following points on appeal:

1. The Court below erred in granting the defendants' Motion to Dismiss, and ordering that the cause be dismissed upon the ground that the United States of America is not a proper party plaintiff.

2. The Court below erred in holding that this action could not be conducted and maintained in the name of the

United States, the said ruling being contrary to the provisions of Section 901 of Title 50 United States Code, as amended (Act of July 25, 1946, 60 Stat. 664) and Executive Order No. 9842 issued by the President in pursuance of his authority under the Constitution and statutes of the United States, including Title I of the First War Powers Act, 1941.

3. The Court below erred in failing to hold that the United States is the real party in interest, properly substituted as party plaintiff.

Otto Kerner, Jr.,
United States Attorney.

(Certificate of Mailing Attached But Not Copied.)

22 And on the same day, to wit, the 10th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Designation Of Record, in words and figures following, to wit:

23 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—46-C-743) * *

DESIGNATION OF RECORD.

The United States of America, by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, designates the following portions of the record to be contained in the record on the appeal of this cause:

1. Complaint filed April 26, 1946.
2. Order entered May 15, 1947, substituting Philip B. Fleming as party plaintiff.
3. Order entered June 9, 1947, substituting the United States of America as party plaintiff.
4. Motion to dismiss, filed January 9, 1950.
5. Order entered January 9, 1950, dismissing this cause.
6. Notice of Appeal.
7. Copy of this Designation.
8. Statement of Points Relied Upon on Appeal.
9. Transcript of proceedings had before the Honorable Michael L. Igoe on January 6, 1950, and January 9, 1950.

Otto Kerner, Jr.,
United States Attorney.

24 United States of America,
Northern District of Illinois. } ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing, together with the Transcript of Proceedings incorporated and certified this day in the Transcript of Record on Appeal, in the cause entitled: United States of America, Plaintiff *vs.* Allied Oil Corporation, Defendant, No. 44-C-796, to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled: United States of America, Plaintiff, Harvey, Inc., a corporation, etc., et al., Defendants, No. 46-C-743, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 3rd day of March, 1950.

(Seal)

Roy H. Johnson,
Clerk,
By Gizella Butcher,
Deputy Clerk.

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In the

United States Court of Appeals

For the Seventh Circuit

No. 10137

THE UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

EVA METNICK, DOING BUSINESS AS COUNTY DISTRIBUTORS, HARRY METNICK, MORRIS METNICK, JOE SILVA AND JACK METNICK,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

The Gunthorp-Warren Printing Co., Chicago—3-14-56—50

1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January (it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty and of the Independence of the United States of America, the 174th Year.

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. La Buy, District Judge.
Honorable Elwyn R. Shaw, District Judge.
Honorable William H. Holly, District Judge.
Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Monday, January 9, 1950.

Court met pursuant to adjournment.

Present: Honorable Michael L. Igoe, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Paul A. Porter, Administrator, Office of the Price Administration, for and on behalf of the United States,
Plaintiff,
vs.
Eva Metnick, doing business as County Distributors, Harry Metnick, Morris Metnick, Joe Silva and Jack Metnick,
Defendants.
} No. 46-C-1986.

Be It Remembered, that on to-wit, the 3rd day of December, 1946, the above-entitled action was commenced by the filing of the following Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—46-C-1986) * *

Part I.

Now comes the plaintiff and for cause of action against said defendant alleges and shows:

1. Plaintiff is the duly qualified, appointed and acting Administrator of the Office of Price Administration.

2. That at all times pertinent hereto, there was and still is in effect an act known as the Emergency Price Control Act of 1942, as amended and extended, (56 Stat. 23; 56 Stat. 765; 56 Stat. 632; 50 U. S. C. A. App. Ser. 901 et seq.;) Act of July 25, 1946, Public Law 548, Ch. 671 of the 79th Congress, Second Session, hereinafter referred to as the Act, and, duly promulgated pursuant to said Act, Maximum Price Regulation 540 (10 F. R. 1383).

This action is brought pursuant to Sect. 205 (E) of the Act to enforce compliance with said Act and said Regulations and Orders issued thereunder. Jurisdiction of this action is conferred upon this Court by Section 205 (e) of the Act.

3. That at all times mentioned herein, the defendant(s) named in the caption hereof, within the jurisdiction of this Court, did business under the name and at the address set forth below, buying, selling and handling, among others, the commodities or services indicated, which are the subject of this action and the prices, receipt, transfer and handling of which are controlled by said acts and regulations:

Name: Eva Metnick, d/b/a County Distributors, Harry Metnick, Morris Metnick, Joe Silva, and Jack Metnick.
Address: 2739 West Madison Street.
City and State: Chicago, Illinois.
Commodities: Used passenger automobiles.

Count I.

(Treble Damages—Open End)
(Sales to Consumers)

1. The allegations of Part I, paragraphs 1, 2, and 3 are incorporated herewith as being herein set forth in full.

2. From December 1, 1945 to November 9, 1946 defendant sold said commodities covered by said Regulation to divers persons, at prices higher than the maximum prices established by the Act and said Regulation.

3. More than 30 days have elapsed since the occurrence of the aforementioned overcharges and the said divers persons so overcharged have not instituted any action for damages on account of such overcharges within 30 days of the date thereof pursuant to Section 205 (e) of the Act.

4 Wherefore, plaintiff prays:

1. That a judgment be entered for and on behalf of the United States against the defendants, in the sum of three times the amount by which the defendants' said price charges exceeded the applicable maximum price legally required by the Regulation; and that payment of the judgment herein be made as follows:

(a). Restitution of the actual amount overcharged to

each person who has been overcharged as aforesaid, by delivering said payments to the plaintiff; then the said payments to be delivered by the plaintiff to the said persons who have been overcharged as aforesaid; and

(b) The balance of the amount of the judgment herein to be paid to the plaintiff, payable to the order of the Treasurer of the United States.

2. That the costs of this action be taxed against the defendants by said judgment.

3. That such other and further relief be granted as the Court may deem just and proper.

Dated, Chicago, Illinois, this 26 day of November, 1946.

Paul A. Porter,
Administrator, Office of Price Administration, Chicago Metropolitan Area.
By: William J. Corrigan,
District Enforcement Attorney.
Joseph B. Kovarick,
Enforcement Attorney.
Vincent P. Clohisy,
Enforcement Attorney.

Count II.

(Treble Damages)
(Sales in Course of Trade or Business)

1. The allegations of Part I, paragraphs 1, 2 and 3 are incorporated herein as if herein set forth in full.

2. Between the date of December 1, 1945 and the date of November 9, 1946, defendant sold said commodities covered by said Regulation to divers purchasers, and payment was received therefor, at prices in excess of the maximum prices established by the Act and said Regulation.

3. That none of said sales were made to purchasers for their own use or consumption other than in the course of trade or business.

5 And afterwards, to wit, on the 5th day of March, 1947, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

6 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—46-C-1986) * *

On stipulation of the parties by counsel filed herein

It Is Ordered that Philip B. Fleming, Administrator, Office of Temporary Controls, for and on behalf of the United States, be and he is hereby substituted as party plaintiff in place and stead of Paul A. Porter, Administrator, etc.

7 And afterwards, to wit, on the 10th day of June, 1947, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Elwyn R. Shaw, District Judge, appears the following entry to wit:

8 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—46-C-1986) * *

ORDER.

On motion of J. Albert Woll, United States Attorney for the Northern District of Illinois,

It Is Hereby Ordered:

1. That the United States of America is hereby granted leave to substitute as party plaintiff herein;

2. That J. Albert Woll, United States Attorney for the Northern District of Illinois is hereby granted leave to file his appearance herein on behalf of the United States of America.

Enter:

Shaw,

Judge.

Dated at Chicago, Illinois, this 10th day of June, A. D. 1947.

9 And afterwards on, to wit, the 9th day of January, 1950 came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Motion To Dismiss Or Abate in words and figures following to wit:

10 IN THE DISTRICT COURT OF THE UNITED STATES.
• • (Caption—46-C-1986) • •

MOTION TO DISMISS OR ABATE.

Now comes Eva Metnick, doing business as County Distributors, Harry Metnick, Morris Metnick, Joe Silva and Jack Metnick, by Milton T. Raynor, their attorney, and move the Court to dismiss, or in the alternative to abate the above-entitled cause on the ground that the said cause is not being prosecuted in the name of or by the real party in interest, and in support of said motion state the following:

1. The above-entitled cause was filed herein on December 3, 1946, by Paul A. Porter, Administrator, for and on behalf of the United States. The complaint is based upon the Emergency Price Control of 1942 (56 Stat. 23; 50 U. S. C. 901 et seq.) as amended and extended, and Maximum Price Regulation 540, as amended, duly promulgated pursuant to said Act. On the 4th day of March, 1947, Philip B. Fleming, Administrator, Office of Temporary Controls, was substituted as party plaintiff, in place of Paul A. Porter.

11 2. On April 23, 1947, the President of the United States promulgated Executive Order 9841 (12-Fed. Reg. 2645), which effective June 1, 1947, terminated the Office of Temporary Controls and transferred its functions with certain exceptions to the Secretary of Commerce, which order provides that all functions vested in the Temporary Controls Administrator, with certain exceptions, are "transferred to the Secretary of Commerce and shall be performed by him or subject to his direction and control by such officer or agencies of the Department of Commerce as the Secretary may designate • • •."

3. Thereafter, on June 10, 1947, an order was entered by this Court substituting United States of America as party plaintiff therein; however, at no time during this proceeding, has the Secretary of Commerce, the successor

to Philip B. Fleming, Administrator, Office of Temporary Controls, sought leave to substitute as party plaintiff and has in fact failed within six (6) months after taking office to satisfactorily show to the Court that there is a substantial need for continuing and maintaining this action and to move to be substituted as plaintiff, in conformity with Rule 25d of Federal Rules of Civil Procedure.

4. That Rule 17A of the Federal Rules of Civil Procedure requires that every action shall be prosecuted in the name of the real party in interest and as appears from the foregoing, the real party in interest herein is not the United States of America but is the Secretary of Commerce of the United States who is designated as successor in office to the plaintiff herein.

Wherefore, defendants move the court that the above-entitled cause be dismissed, or in the alternative be abated.

Eva Metnick, doing business as County Distributors, Harry Metnick, Morris Metnick, Joe Silva and Jack Metnick,

Defendants,

By Milton T. Raynor,
Their Attorney,
33 N. La Salle St.,
Sta. 2-7747.

Received a copy of the foregoing Motion to Dismiss or Abate this 9th day of January, 1950.

Otto Kerner, Jr.,
United States Attorney.

13 And on the same day, to wit, on the 9th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

14 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—46-C-1986) * *

ORDER.

Now comes the defendants, Eva Metnick, doing business as County Distributors, Harry Metnick, Morris Metnick, Joe Silva and Jack Metnick, by their attorney, Milton T. Raynor, due notice having been served on the plaintiff and full arguments having been heard in open court, the court having jurisdiction of the parties and the subject matter and being fully advised in the premises;

It Is Hereby Ordered and Decreed that the above entitled matter be dismissed, by virtue of the fact that the United States of America, plaintiff herein is not a proper party plaintiff.

Enter:

Igoe,
Judge.

Dated at Chicago, Illinois, this 9th day of January, 1950.

15 And afterwards on, to wit, the 7th day of February, 1950 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit:

16 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America, *Plaintiff,* *vs.* Eva Metnick, doing business as County Distributors, Harry Metnick, Morris Metnick, Joe Silva and Jack Metnick, *Defendants.*	Civil Action 46 C 1986.

NOTICE OF APPEAL.

To:

Mr. Milton T. Raynor,
Attorney At Law,
33 North La Salle Street,
Chicago, Illinois.

Now comes the United States of America by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, and hereby gives Notice of Appeal by the plaintiff in the above-entitled cause to the United States Court of Appeals for the Seventh Circuit from the final Order entered herein dismissing the cause of Janaury 9, 1950.

Otto Kerner, Jr.,
United States Attorney for the Northern District of Illinois, Eastern Division.

Dated: Chicago, Illinois, this 7th day of February, A. D. 1950.

(Certificate of Mailing Attached Hereto.)

17 United States of America, }
Northern District of Illinois. } ss.

CERTIFICATE OF MAILING.

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on February 7, 1950, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to

Mr. Milton T. Raynor,
33 N. La Salle St.,
Chicago, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 7th day of February, A. D., 19 ....

Roy H. Johnson,
Clerk,
By Gizella Butcher,
(Seal) *Deputy Clerk.*

18 And afterwards on, to wit, the 10th day of February, 1950 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Statement Of Points in words and figures following, to wit:

19 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—46-C-1986) • •

STATEMENT OF POINTS RELIED UPON ON APPEAL.

The United States of America relies upon the following points on appeal:

1. The Court below erred in granting the defendants' Motion to Dismiss, and ordering, that the cause be dismissed upon the ground that the United States of America is not a proper party plaintiff.

2. The Court below erred in holding that this action could not be conducted and maintained in the name of the United States, the said ruling being contrary to the pro-

visions of Section 901 of Title 50 United States Code, as amended (Act of July 25, 1946, 60 Stat. 664) and Executive Order No. 9842 issued by the President in pursuance of his authority under the Constitution and statutes of the United States, including Title I of the First War Powers Act, 1941.

3. The Court below erred in failing to hold that the United States is the real party in interest, properly substituted as party plaintiff.

Otto Kerner, Jr.,
United States Attorney.

(Affidavit of Mailing Attached But Not Copied.)

20 And on the same day, to wit, the 10th day of February, 1950 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Designation Of Record in words and figures following, to wit:

21 IN THE UNITED STATES DISTRICT COURT.
(Caption—46-C-1986)

DESIGNATION OF RECORD.

The United States of America, by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, designates the following portions of the record to be contained in the record on the appeal of this cause:

1. Complaint filed December 3, 1946.
2. Order entered March 5, 1947, substituting Philip B. Fleming as party plaintiff.
3. Order entered June 10, 1947, substituting the United States of America as party plaintiff.
4. Motion to Dismiss or Abate, filed January 9, 1950.
5. Order entered January 9, 1950, dismissing this cause.
6. Notice of Appeal.
7. Copy of this Designation.
8. Statement of Points Relied Upon on Appeal.
9. Transcript of proceedings before the Honorable Michael L. Igoe on January 6, 1950 and January 9, 1950.

Otto Kerner, Jr.,
United States Attorney.

22 United States of America,
Northern District of Illinois. } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing, together with the Transcript of Proceedings, incorporated and certified this day in the Transcript of record on Appeal, in the cause entitled United States of America, Plaintiff *vs.* Allied Oil Corporation, Defendant, No. 44-C-796, to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled: United States of America, Plaintiff *vs.* Eva Metnick, doing business as County Distribtuors, et al., Defendants, No. 46-C-1986, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 3rd day of March, 1950.

Roy H. Johnson,
Clerk,
By Gizella Butcher,
Deputy Clerk.

(Seal)

TRANSCRIPT OF RECORD

In the

United States Court of Appeals

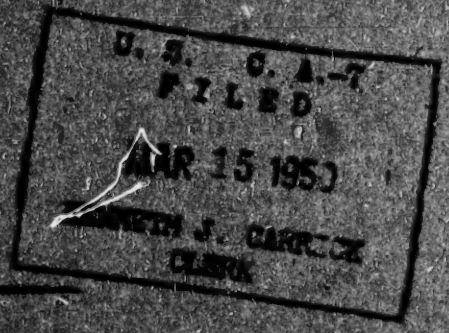
For the Seventh Circuit

No. 10139

THE UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

JACK STEIN AND HARRY ROBINS, INDIVIDUALLY AND DOING BUSINESS AS BOULEVARD MOTOR SALES,
Defendants-Appellees.



Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

TRANSCRIPT OF RECORD FILED MAR. 3, 1950.
PRINTED RECORD.

In the

United States Court of Appeals

For the Seventh Circuit

No. 10139

THE UNITED STATES OF AMERICA,
Plaintiff-Appellant.

vs.

JACK STEIN AND HARRY ROBINS, INDIVIDUALLY AND DOING BUSINESS AS BOULEVARD MOTOR SALES,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

USCA 2204 The Gunthorp-Warren Printing Co., Chicago—3-14-50—50

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1 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January (it being the 2nd day thereof) in the Year of Our Lord One Thousand Nine Hundred and Fifty and of the Independence of the United States of America, the 174th Year.

Present:

Honorable John P. Barnes, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. LaBuy, District Judge.
Honorable Elwyn R. Shaw, District Judge.
Honorable William H. Holly, District Judge.
Roy H. Johnson, Clerk.
Thomas P. O'Donovan, Marshal.

Monday, January 9, 1950.

Court met pursuant to adjournment.

Present: Honorable Michael L. Igoe, Trial Judge.

2 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

Philip B. Fleming, Administrator, Office of Temporary Controls, Office of Price Administration, for and on behalf of the United States,

Plaintiff,

vs.

Jack Stein, and Harry Robins, individually and doing business as Boulevard Motor Sales,

Defendant.

No. 47-C-604.

Be It Remembered, that on to-wit, the 15th day of April, 1947, the above-entitled action was commenced by the filing of the following Complaint in the office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to-wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47-C-604) * *

COMPLAINT.

Now comes the Plaintiff and for cause of action against said Defendants alleges and shows:

1. Plaintiff is the duly qualified, appointed and acting Anministrator of the Office of Temporary Controls, Office of Price Administration.

2. That at all times pertinent hereto, there was and still is in effect an act known as the Emergency Price Control Act of 1942 (56 Stat. 23; 50 U. S. C. App. Sec. 901 *et seq.*), as amended and extended, hereinafter referred to as the Act, and duly promulgated pursuant to said Act, Maximum Price Regulation 540 (9 F. R. 6434), as amended, said Regulation being effective during all times material herein. This action is brought pursuant to Sect. 205 (e) of the Act to enforce compliance with said Act and said

Regulations and Orders issued thereunder. Jurisdiction of this Action is conferred upon this Court by Section 205 (c) of the Act.

3. That at all times mentioned herein, the Defendants named in the caption hereof, within the jurisdiction of this Court, did business under the name and at the address set forth below, buying, selling and handling, among others, the commodities or services indicated, which are the subject of this action and the prices, receipt, transfer and handling of which are controlled by said Act and said Regulations:

Name: Jack Stein and Harry Robins, individually and d/b/a Boulevard Motor Sales.
Address: 2411 South Michigan Avenue.
City and State: Chicago, Illinois.
Commodity: Used Cars.

4 Count I.

(Treble Damages—Open End)
(Sales to Consumers)

1. The allegations of Part I, paragraphs 1, 2, and 3 are incorporated herewith as being herein set forth in full.

2. From April 15, 1946, to November 10, 1946, Defendants sold said commodities covered by said Regulation to divers persons, at prices higher than the maximum prices established by the Act and said Regulation.

3. More than 30 days have elapsed since the occurrence of the aforementioned overcharges and the said divers persons so overcharged have not instituted any action for damages on account of such overcharges within 30 days of the date thereof pursuant to Section 205 (e) of the Act.

Count II.

(Treble Damages)
(Sales in Course of Trade or Business)

1. The allegations of Part I, paragraphs 1, 2 and 3 are incorporated herein as if herein set forth in full.

2. Between the date of April 15, 1946, and the date of November 10, 1946, Defendants sold said commodities covered by said Regulation to divers purchasers, and payment was received therefor, at prices in excess of the

maximum prices established by the Act and said Regulation.

3. That none of said sales were made to purchasers for their own use or consumption other than in the course of trade or business.

Wherefore, the Plaintiff demands:

A. Judgment for the Plaintiff to recover of the Defendants treble the total amounts received by the Defendants from purchasers of the used cars involved in this Complaint, which were in excess of the maximum prices established by the Act and Regulation 540, as amended, issued thereunder, and further that;

B. The Defendants be ordered and directed:

To tender to such persons as are entitled thereto a refund of all the amounts which were in excess of the maximum prices established by the Act and Maximum Price Regulation 540, as amended, issued thereunder, which were received by the Defendants from purchasers of the used cars involved in this Complaint, provided that refunds made by the Defendants to such purchasers, in compliance with the directions of the Court for overcharges within one year prior to the bringing of this action, shall be deducted from the amount of the Judgment prayed for in the preceding paragraph "A".

Philip B. Fleming, Administrator, Office of Temporary Controls Office of Price Administration,

By: Isadore L. Kovitz,
Regional Enforcement Executive,
William J. Corrigan,
Attorney in Charge Chicago Branch Office,
George A. Hall,
Chief Review and Disposition Section Chicago Branch Office,
Edwin A. Dvorak,
Enforcement Attorney.
Attorneys for the Plaintiff, Office of Temporary Controls, Office of Price Administration,
Chicago Branch Office,
226 West Jackson Boulevard,
Chicago 6, Illinois,
ANdover 3600,
Extension 425.

6 And afterwards, to wit, on the 22nd day of May, 1947, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

7 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47-C-604) * *

On motion of the defendants by counsel

It Is Ordered that the time of said defendants within which to answer or otherwise plead be and it is hereby extended for a period of twenty (20) days from this date.

8 And afterwards, to wit, on the 9th day of June, 1947, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

9 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47-C-604) * *

ORDER.

On motion of J. Albert Woll, United States Attorney for the Northern District of Illinois,

It Is Hereby Ordered:

1. That the United States of America is hereby granted leave to substitute as party plaintiff herein;

2. That J. Albert Woll, United States Attorney for the Northern District of Illinois is hereby granted leave to file his appearance herein on behalf of the United States of America.

Enter;

Igoe,

Judge.

Dated at Chicago, Illinois, this 9th day of June, A. D. 1947.

10 And afterwards, to wit, on the 29th day of October, 1947, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

11 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47-C-604) * *

On motion of the plaintiff by the United States Attorney it is

Ordered that the plaintiff be and it is hereby given twenty (20) days from this date within which to file brief and that this cause be and it is hereby set for trial on February 4, 1948.

12 And afterwards, to wit, on the 4th day of February, 1948, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

13 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47-C-604) * *

On motion of the plaintiff by counsel it is

Ordered that this cause be and it is hereby reset for trial on May 25, 1948.

14 And afterwards, to wit, on the 25th day of May, 1948, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

15 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47-C-604) * *

On agreement of the parties by counsel now made in open Court it is

Ordered that this cause be and it is hereby reset for trial to September 30, 1948.

16 And afterwards, to wit, on the 30th day of September, 1948, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

17 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—47-C-604) * *

On motion of the plaintiff by the United States Attorney it is

Ordered that this cause be and it is hereby reset for trial to January 20, 1949.

18 And afterwards, to wit, on the 20th day of January, 1949, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

19 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—47-C-604) * *

On motion of the plaintiff by the United States Attorney it is

Ordered that this cause be and it is hereby continued for trial to April 11, 1949, before the Honorable Michael L. Igoe, one of the Judges of this Court.

20 And afterwards, to wit, on the 11th day of April, 1949, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

21 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—47-C-604) * *

It Is Ordered by the Court that this cause be and it is hereby reset for trial to June 13, 1949.

22 And afterwards, to wit, on the 13th day of June, 1949, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

23 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—47-C-604) * *

On agreement of the parties by counsel now made in open Court it is

Ordered that this cause be and it is hereby reset for trial to October 6, 1949.

24 And afterwards, to wit, on the 6th day of October, 1949, being one of the days of the regular October term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

25 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—47-C-604) * *

On motion of the plaintiff by the United States Attorney it is

Ordered that this cause be and it is hereby reset for trial to December 7, 1949.

26 And afterwards, to wit, on the 7th day of December, 1949, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

27 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—47-C-604) * *

On the Court's own motion it is

Ordered that this cause be and it is hereby continued for trial to January 6, 1950.

28 And afterwards on, to wit, the 9th day of January, 1950, came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Motion to Dismiss or Abate in words and figures following, to wit:

29 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47-C-604) * *

MOTION TO DISMISS OR ABATE.

Now come Jack Stein and Harry Robins, individually and doing business as Boulevard Motor Sales, defendants, by Sherwin & Sherwin, their attorneys, and move the court to dismiss, or in the alternative to abate the above entitled cause on the ground that the said cause is not being prosecuted in the name of or by the real party in interest, and in support of said motion state the following:

1. The above-entitled cause was filed herein on April 15, 1947 by Philip B. Fleming, Administrator, Office of Temporary Controls, Office of Price Administration, for and on behalf of the United States. The complaint is based upon the Emergency Price Control of 1942 (56 Stat. 23; 50 U.S.C. 901, *et seq.*) as amended and extended, and Maximum Price Regulation 540 as amended, duly promulgated pursuant to said Act.

2. On April 23, 1947 the President of the United States promulgated Executive Order 9841 (12 Fed. Reg. 2645) which effective June 1, 1947 terminated the Office of Temporary Controls and transferred its functions with certain exceptions to the Secretary of Commerce, which order provides that all functions vested in the Temporary Controls Administrator, with certain exceptions are "transferred to the Secretary of Commerce and shall be
30 performed by him or subject to his direction and control by such officers or agencies of the Department of Commerce as the Secretary may designate * * *".

3. Thereafter, on June 9, 1947, an order was entered by this court substituting United States of America as party plaintiff therein; however, at no time during this proceeding has the Secretary of Commerce, the successor to Philip B. Fleming, Temporary Controls Administrator, sought leave to substitute as party plaintiff, and has in

fact failed within six months after taking office to satisfactorily show to the Court that there is a substantial need for continuing and maintaining this action and to move to be substituted as plaintiff in conformity with Rule 25d of the Federal Rules of Civil Procedure.

4. That Rule 17a of the Federal Rules of Civil Procedure requires that every action shall be prosecuted in the name of the real party in interest, and as appears from the foregoing the real party in interest herein is not the United States of America but is the Secretary of Commerce of the United States who is designated as successor in office to the original plaintiff herein.

Wherefore defendants move the Court that the above-entitled cause be dismissed, or in the alternative be abated.

Jack Stein and Harry Robins, individually and doing business as Boulevard Motor Sales, defendants.
By Sherwin & Sherwin, *their Attorneys.*
209 South La Salle St. CE 6-2010
Chicago
Theodore R. Sherwin.

Received a copy of the foregoing Motion to Dismiss or Abate this ..... day of January, 1950.

Otto Kerner, Jr.
United States Attorney.

31 And on the same day, to wit, on the 9th day of January, 1950, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

32 In the District Court of the United States.
* * (Caption—47-C-604) * *

ORDER.

This Cause coming on to be heard on the motion of the defendants, Jack Stein and Harry Robins to dismiss the above entitled cause on the ground that the said cause is not being prosecuted in the name of or by the real party in interest, due notice having been given to all parties of

record, and the court having heard the arguments of counsel, and being fully advised in the premises, Finds:

1. The above entitled cause was filed herein on April 15, 1947 by Philip B. Fleming, Administrator, Office of Temporary Controls, Office of Price Administration, for and on behalf of the United States. The complaint is based upon the Emergency Price Control of 1942 (56 Stat. 23; 50 U.S.C. 901, *et seq.*) as amended and extended, and Maximum Price Regulation 540 as amended, duly promulgated pursuant to said Act.

2. On April 23, 1947 the President of the United States promulgated Executive Order 9841 (12 Fed. Reg. 2645) which effective June 1, 1947 terminated the Office of Temporary Controls and transferred its functions with certain exceptions to the Secretary of Commerce, which order provides that all functions vested in the Temporary Controls Administrator, with certain exceptions are "transferred to the Secretary of Commerce and shall be per-
33 formed by him or subject to his direction and control by such officers or agencies of the Department of Commerce as the Secretary may designate * * *"

3. On June 9, 1947, an order was entered by this Court substituting United States of America as party plaintiff therein:

4. At no time during this proceeding has the Secretary of Commerce, the successor to Philip B. Fleming, Temporary Controls Administrator, sought leave to substitute as party plaintiff, and he has in fact failed within six months after taking offices to satisfactorily show to the Court that there is a substantial need for continuing and maintaining this action and to move to be substituted as plaintiff in conformity with Rule 25d of the Federal Rules of Civil Procedure.

5. The United States of America is not the real party in interest and therefore cannot properly prosecute this action, the real party in interest being the Secretary of Commerce of the United States. The said Secretary of Commerce having failed to move to be substituted as plaintiff in conformity with Rule 25d, the above entitled cause is therefore abated.

It Is Therefore Hereby Ordered, Adjudged and Decreed that the above entitled cause be and it is hereby dismissed.

Enter:

January 9, 1950

Igoe,
Judge.

34 And afterwards on, to wit, the 7th day of February, 1950, came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Notice of Appeal in words and figures following, to wit:

35 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois,

Eastern Division.

United States of America,
Plaintiff,
vs.
Jack Stein, *et al.*,
Defendants.
} 47 C 604.

NOTICE OF APPEAL.

To: Sherwin and Sherwin,
Attorneys at Law,
209 South La Salle Street,
Chicago, Illinois.

Now comes the United States of America by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, and hereby gives Notice of Appeal by the plaintiff in the above-entitled cause to the United States Court of Appeals for the Seventh Circuit from the final Order entered herein dismissing the cause on January 9, 1950.

Otto Kerner, Jr.,
United States Attorney, for the Northern District of Illinois, Eastern Division.

Dated: Chicago, Illinois, this 7th day of February, A. D. 1950.

(Certificate of mailing attached but not copied.)

36 United States of America,
Northern District of Illinois. } ss.

Certificate of Mailing.

I, Roy H. Johnson, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that on February 7, 1950, in accordance with Rule 73 (b) of the Federal Rules of Civil Procedure a copy of the foregoing Notice of Appeal was mailed to

Sherwin & Sherwin,
209 S. La Salle St.,
Chicago, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, this 7th day of February, A. D., 1950.

Roy H. Johnson,
(Seal) *Clerk.*
By Gizella Butcher,
Deputy Clerk.

37 And afterwards on, to wit, the 10th day of February, 1950 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Statement of Points in words and figures following, to wit:

38 In the United States District Court.
* * (Caption—47-C-604) * *

STATEMENT OF POINTS RELIED UPON ON APPEAL.

The United States of America relies upon the following points on appeal:

1. The Court below erred in granting the defendants' Motion to Dismiss, and ordering that the cause be dismissed upon the ground that the United States of America is not a proper party plaintiff.

2. The Court below erred in holding that this action could not be conducted and maintained in the name of the

United States, the said ruling being contrary to the provisions of Section 901 of Title 50 United States Code, as amended (Act of July 25, 1946, 60 Stat. 664) and Executive Order No. 9842 issued by the President in pursuance of his authority under the Constitution and statutes of the United States, including Title I of the First War Powers Act, 1941.

3. The Court below erred in failing to hold that the United States is the real party is interest, properly substituted as party plaintiff.

Otto Kerner, Jr.,
United States Attorney.

(Affidavit of mailing attached but not copied.)

39 And on the same day to wit, the 10th day of February, 1950 came the Plaintiff by its attorneys and filed in the Clerk's office of said Court its certain Designation of Record in words and figures following, to wit:

40 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—47-C-604) * *

DESIGNATION OF RECORD.

The United States of America, by Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, designates the following portions of the record to be contained in the record on the appeal of this cause:

1. Complaint filed April 15, 1947.
2. Order entered June 9, 1947, substituting the United States of America as party plaintiff.
3. Motion to Dismiss or Abate, filed January 9, 1950.
4. Order entered January 9, 1950, dismissing this cause.
5. Notice of Appeal.
6. Copy of this Designation.
7. Statement of Points Relied Upon on Appeal.
8. Transcript of proceedings had before the Honorable M. L. Igoe, on Jan. 6, 1950 and Jan. 9, 1950.

Otto Kerner, Jr.,
United States Attorney.

41 And afterwards on, to wit, the 16th day of February, 1950 came the Defendants by their attorneys and filed in the Clerk's office of said Court their certain Additional Designation of Record in words and figures following, to wit:

42 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—47-C-604) * *

ADDITIONAL DESIGNATION OF RECORD.

Jack Stein and Harry Robins, defendants, by Sherwin & Sherwin, their attorneys, designate the following additional portions of the record to be contained in the record on the appeal of this cause:

All orders of court reflecting the setting of the above cause for trial and all orders showing the continuance of said cause for trial.

Jack Stein and Harry Robins, individually and doing business as Boulevard Motor Sales, defendants,
By Sherwin & Sherwin,
Their Attorneys,
209 South La Salle St.
CE 6 2010, Chicago,
Theodore R. Sherwin.

Received a copy of the foregoing Additional Designation of Record this 15th day of February 1950.

Otto Kerner, Jr.,
United States Attorney.

43 United States of America,
Northern District of Illinois. } ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing, together with the Transcript of Proceedings, incorporated and certified this day in the Transcript of Record on Appeal, in the cause entitled: *United States of America, Plaintiff*, v. *Allied Oil Corporation, Defendant*, No. 44-C-796, to be a true and complete transcript of the proceedings had of record made in accordance with the Designations of Plaintiff and Defendants, Respectively filed in this Court in the cause entitled: *United States of America, Plaintiff*, v. *Jack Stein, et al., Defendants*, No. 47-C-604, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 3rd day of March, 1950.

Roy H. Johnson,

Clerk.

By Gizella Butcher,

Deputy Clerk.

(Seal)

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921638—50

At a regular term of the United States Court of Appeals for the Seventh Circuit, held in the city of Chicago and begun on the fourth day of October, in the year of our Lord one thousand, nine hundred and forty-nine, and of our Independence the one hundred seventy-fourth.

No. 10132

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

ALLIED OIL COMPANY, DEFENDANT-APPELLEE

No. 10133

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

P. & M. LIQUOR CORP., ET AL., DEFENDANTS-APPELLEES

No. 10134

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

NICRO STEEL PRODUCTS, INC., DEFENDANT-APPELLEE

No. 10135

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

HARVEY, ET AL., DEFENDANTS-APPELLEES

No. 10137

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

EVA METNICK, DOING BUSINESS AS COUNTY DISTRIBUTORS, ET AL., DEFENDANTS-APPELLEES

No. 10139

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

JACK STEIN AND HARRY ROBINS, INDIVIDUALLY AND DOING BUSINESS AS BOULEVARD MOTOR SALES, DEFENDANTS-APPELLEES

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division

And afterward, to wit, on the nineteenth day of July 1950, there was filed in the office of the Clerk of this Court the opinion of the Court, which said opinion is in the words and figures following, to wit:

In the United States Court of Appeals for the Seventh Circuit

OCTOBER TERM, 1949, APRIL SESSION, 1950

No. 10132

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

vs.

ALLIED OIL CORPORATION, DEFENDANT-APPELLEE

No. 10133

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

P. & M. LIQUOR CORP., ET AL., DEFENDANT-APPELLEE

No. 10134

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

NICRO STEEL PRODUCTS, INC., DEFENDANT-APPELLEE

No. 10135

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

HARVEY, INC., ET AL., DEFENDANT-APPELLEE

No. 10137

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

KVA METNICK, DOING BUSINESS AS COUNTY DISTRIBUTORS, ET AL., DEPENDANTS-APPELLEES

No. 10139

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

JACK STEIN AND HARRY ROBINS, INDIVIDUALLY AND DOING BUSINESS AS BOULEVARD MOTOR SALES, DEPENDANT-APPELLEES

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division

July 19, 1950

Before MAJOR, Chief Judge, and DUFFY and LINDLEY, Circuit Judges.

LINDLEY, Circuit Judge.

These are consolidated appeals from the respective judgments in six causes brought originally by Chester Bowles, Administrator

of the Office of Price Administration, Paul A. Porter, his successor in office, or Philip B. Fleming, Administrator of the Office of Temporary Controls, as successor to Porter, against six different entities to recover damages for sales, in excess of maximum prices, alleged to have been made by defendants in violation of the Emergency Price Control Act of 1942 as amended and the regulations issued pursuant thereto. On June 6, 1947, all the suits were pending in the name of Fleming, Administrator of the Office of Temporary Controls. On that day and the ensuing four days, the District Court, upon motion of the Government, ordered that the United States be substituted as plaintiff in each of the several causes. On January 9, 1950, the court, upon motion of defendants, entered, in each case, an order vacating the last-mentioned order and dismissing the suit, holding (1) that the United States "is not the real party in interest and therefore cannot properly prosecute this case, the real party in interest being the Secretary of Commerce," and (2) that the Secretary of Commerce having failed to be substituted as plaintiff, in conformity with Rule 25 (d) (Federal Rules of Civil Procedure), "the * * * cause is therefore abated." The contested issue on appeal, in the words of the Government, is "whether the United States can maintain these suits * * * in its name."

By section 205 (e) of the Emergency Price Control Act (50 U. S. C. A. App. Sec. 925 (e)), Congress created a civil liability for damages against any seller who should sell commodities at prices in excess of the maximum fixed by the Office of Price Control. Under the Act, for damages resulting, if not sought by the buyer, "the administrator may institute * * * an action." "Any action by the buyer or the administrator, as the case may be, may be brought in any court of competent jurisdiction." Acting under this congressional grant of authority, the administrator, from time to time thereafter, instituted and prosecuted such suits in his name as administrator, his right so to proceed, so far as we are advised, never being questioned. When price control was removed, the Congress, by saving clause in the repealing act (Title 50, U. S. C. A. App. Sec. 901) provided that "the provisions of this act and * * * regulations, orders, price schedules and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action or prosecution with respect to any such right, liability or offense." After repeal, the President, acting in pursuance of Congressional authority, designated Phillip B. Fleming as administrator of the Office of Temporary Controls, to succeed Paul A. Porter, Administrator of Price Control, and he was, by order of the District Court, substituted as plaintiff in each of the suits at bar, which had theretofore been instituted by the Administrator of Price Control in his name, as provided he might

do in Sec. 205 (e) of the Emergency Price Control Act. Still later, on April 23, 1947, the President, by Executive Order #9841 (12 Fed. Reg. 2645) directed (as he was authorized so to do by then existing law), that all price control functions theretofore vested in the Temporary Controls Administrator should be "transferred to the Secretary of Commerce and * * * be performed by him or, subject to his direction and control, by such officers or agencies of the Department of Commerce as the Secretary may designate," and that such transfer of functions should include "authority on the part of each officer to whom such functions are transferred * * * to *institute, maintain, or defend in his own name* civil proceedings in any court * * * relating to the matters transferrd to him, including any such proceedings pending on the effective date of the transfer" of functions to him. (Emphasis supplied). Despite this directive, no application was ever made by the Secretary of Commerce to be substituted for his predecessor as plaintiff in these actions. On June 6 to June 10, 1947, inclusive, however, as we have observed, the government moved and the court ordered that the United States be substituted as party plaintiff in each cause. Still later, upon motion of defendants, the orders last entered were vacated and the suits dismissed.

In view of the Congressional provision of authority in the administrator to prosecute actions in his name, the clause in the repealing act saving remedies and the President's authoritative transfer to the Secretary of Commerce of the remaining functions of price control, including the right to maintain actions such as these in his own name, it would seem clear that the proper party plaintiff, after the transfer mentioned, was the Secretary of Commerce; and so the District Court held, relying upon our decision in Bowles vs. Wilke, 175 Fed. (2d) 35, certiorari denied, 338 U. S. 861. But the government insists that, inasmuch as all such actions are in behalf and for the benefit of the United States, the latter is the real party in interest and can, therefore, always prosecute such actions as the true party in its own name, despite our ruling to the contrary in Bowles vs. Wilke, 175 F. (2d) 35.

The President, says the government, in Executive Order 9842 (12 F. R. 2646), effective on the same date as Order 9841, authorized the Attorney General to maintain these suits in the name of the United States. The first order was made subject to the second. By Order #9842, the Attorney General was authorized and directed to conduct and maintain price control enforcement litigation "in the name of the United States or otherwise as permitted by law." This provision, the government asserts, is a grant of power to the Attorney General to prosecute civil enforcement suits in

the name of the United States. Obviously the President could not create new causes of action or vest a new party with a right of action lodged by act of Congress in another; that could have been done only by the Congress. It would seem clear then, that a direction by the President to conduct suits in the name of the United States, when Congress had provided that the administrator or his successor should have this right, would be beyond the Executive's power. However, we cannot attribute to the President an intent to override the acts of Congress; indeed we think it clear that he intended the contrary, i. e., to direct that proceedings be in accord with congressional enactments and that he was merely directing that the Department of Justice should furnish the staff of manpower, i. e., legal and investigating personnel, necessary effectively to prosecute "price control enforcement litigation," in lieu of conduct of such litigation by the staff of the Office of Price Administration, which had disappeared with repeal of price control; and this, irrespective of whether the suits are criminal, all of which obviously must be brought and prosecuted in the name of the United States, or whether they are civil, to be brought and prosecuted in the manner and in the name of the party "provided by law." In other words, the President directed that the Department of Justice should prosecute all enforcement suits in such manner and in such names as Congress had prescribed. Any other conclusion would result in a determination that the Chief Executive transcended his own authority and encroached upon that of the legislative department. This we are unwilling to do; and we are sure that such was not the intent or purport of what he said. Nor was it a "whim or caprice" upon his part to transfer the function of prosecuting such suits to the Commerce Department, as the government suggests it would have been. On the contrary, this was the exercise of executive discretion, for it was not illogical, when the Office of Price Control was abolished, to transfer its activities to the Department of Commerce, for sales in excess of ceiling prices are a part of commerce. Nor does the fact, if it be a fact, that that department was not staffed with sufficient employees or legal representatives to effectuate enforcement impinge upon the propriety of this conclusion, for it is evident from Order #9842 that it was the President's intent that the Department of Justice should, with its investigating and legal staff, perform the necessary enforcement functions involved in prosecuting enforcement litigation. Such, we think, is the order's plain intent. And by Order #9841, the litigation was to be prosecuted in the name of the Secretary of Commerce.

Inasmuch, therefore, as the court was, in view of the acts of Congress, not justified in permitting anyone to prosecute these

suits other than the Administrator or his successor, and inasmuch as the President had made the Secretary of Commerce the successor, no one other than that successor could be substituted as plaintiff. Hence we reach no question of abatement. Since Congress has not authorized the government to conduct civil enforcement suits in the name of the United States, the Court rightfully dismissed the suits.

The judgments are affirmed.

A True Copy:

Teste:

[SEAL]

KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit.

And on the same day, to wit, on the nineteenth day of July 1950, the following further proceedings were had and entered of record, to wit:

United States Court of Appeals for the Seventh Circuit

Chicago 10, Illinois

Wednesday, July 19, 1950

Before Hon. J. EARL MAJOR, Chief Judge, Hon. F. RYAN DUFFY, Circuit Judge, Hon. WALTER C. LINDLEY, Circuit Judge

No. 10132

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

ALLIED OIL CORPORATION, DEFENDANT-APPELLEE

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

And on the same day, to wit, on the nineteenth day of July 1950, the following further proceedings were had and entered of record, to wit:

United States Court of Appeals for the Seventh Circuit

Chicago 10, Illinois

Wednesday, July 19, 1950

Before Hon. J. Earl Major, Chief Judge, Hon. F. Ryan Duffy, Circuit Judge, Hon. Walter C. Lindley, Circuit Judge

No. 10133

United States of America, plaintiff-appellant

vs.

P. & M. Liquor Corp. et al., defendants-appellees

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

And on the same day, to wit, on the nineteenth day of July 1950, the following further proceedings were had and entered of record, to wit:

United States Court of Appeals for the Seventh Circuit

Chicago 10, Illinois

Wednesday, July 19, 1950

Before Hon. J. Earl Major, Chief Judge, Hon. F. Ryan Duffy, Circuit Judge, Hon. Walter C. Lindley, Circuit Judge

No. 10134

United States of America, plaintiff-appellant

vs.

Nicro Steel Products, Inc., defendant-appellee

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

And on the same day, to wit, on the nineteenth day of July 1950, the following further proceedings were had and entered of record, to wit:

United States Court of Appeals for the Seventh Circuit

Chicago 10, Illinois

Wednesday, July 19, 1950

Before Hon. J. Earl Major, Chief Judge, Hon. F. Ryan Duffy, Circuit Judge, Hon. Walter C. Lindley, Circuit Judge

No. 10135

United States of America, plaintiff-appellant

vs.

Harvey, Inc., et al., defendants-appellees

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

And on the same day, to wit, on the nineteenth day of July 1950, the following further proceedings were had and entered of record, to wit:

United States Court of Appeals for the Seventh Circuit

Chicago 10, Illinois

Wednesday, July 19, 1950

Before Hon. J. Earl Major, Chief Judge, Hon. F. Ryan Duffy, Circuit Judge, Hon. Walter C. Lindley, Circuit Judge

No. 10137

United States of America, plaintiff-appellant

vs.

Eva Metnick, Doing Business as County Distributors, et al., defendants-appellees

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

And on the same day, to wit, on the nineteenth day of July 1950, the following further proceedings were had and entered of record, to wit:

United States Court of Appeals for the Seventh Circuit

Chicago 10, Illinois

Wednesday, July 19, 1950

Before Hon. J. Earl Major, Chief Judge, Hon. F. Ryan Duffy, Circuit Judge, Hon. Walter C. Lindley, Circuit Judge

No. 10139

United States of America, plaintiff-appellant

vs.

Jack Stein and Harry Robins, Individually and Doing Business as Boulevard Motor Sales, defendants-appellees

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

And afterward, to wit, on the twenty-seventh day of July 1950, there was filed in the office of the Clerk of this Court a motion for stay of mandates, which said motion is in the words and figures following, to wit:

In the United States Court of Appeals for the Seventh Circuit

October Term, 1949, April Session, 1950

No. 10132

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

ALLIED OIL CORPORATION, DEFENDANT-APPELLEE

No. 10133

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

P. & M. LIQUOR CORP. ET AL., DEFENDANT-APPELLEE

No. 10134

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

NICRO STEEL PRODUCTS, INC., DEFENDANT-APPELLEE

No. 10135

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

HARVEY, INC., ET AL., DEFENDANT-APPELLEE

No. 10137

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

EVA METNICK, DOING BUSINESS AS COUNTY DISTRIBUTORS ET AL., DEFENDANTS-APPELLEES

No. 10139

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

JACK STEIN AND HARRY ROBINS, INDIVIDUALLY AND DOING BUSINESS AS BOULEVARD MOTOR SALES, DEFENDANTS-APPELLEES

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division

U. S. C. A. 7. Filed July 27, 1950. Kenneth J. Carrick, Clerk.

Motion to stay issuance of mandate

Now comes the United States of America, Plaintiff-Appellant, by its attorney, Otto Kerner, Jr., United States Attorney for the

Northern District of Illinois, and prays that the mandates in the above-indicated appeals be stayed and withheld until August 18, 1950, pending application for certiorari to the Supreme Court of the United States.

OTTO KERNER, JR.,
United States Attorney.

And afterward, to wit, on the first day of August 1950, the following further proceedings were had and entered of record, to wit:

United States Court of Appeals for the Seventh Circuit

Chicago 10, Illinois

August 1, 1950

Before Hon. WALTER C. LINDLEY, Circuit Judge

UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT
vs.
10132 ALLIED OIL CORPORATION; 10133 P. & M. LIQUOR CORPORATION ET AL.; 10134 NICRO STEEL PRODUCTS., INC.; 10135 HARVEY, INC., ET AL.; 10137 EVA METNICK, ETC., ET AL.; 10139 JACK STEIN AND HARRY ROBINS, ETC., DEFENDANTS-APPELLEES

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division

On motion of counsel for the United States of America, plaintiff-appellant, it is ordered that the mandates of this Court in the above-entitled appeals be, and the same are hereby, stayed and withheld until August 18, 1950, pending application for certiorari to the Supreme Court of the United States.

And afterwards, to wit, on the twenty-second day of August 1950, there was filed in the office of the Clerk of this Court a Motion for further stay of mandate which said Motion is in the words and figures following, to wit:

In the United States Court of Appeals for the Seventh Circuit

No. 10132

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT
vs.
ALLIED OIL CORPORATION, DEFENDANT-APPELLEE

No. 10133

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

P. & M. LIQUOR CORP. ET AL., DEFENDANT-APPELLEE

No. 10134

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

NICRO STEEL PRODUCTS, INC., DEFENDANT-APPELLEE

No. 10135

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

HARVEY, INC., ET AL., DEFENDANT-APPELLEE

No. 10137

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

EVA METNICK, DOING BUSINESS AS COUNTY DISTRIBUTORS ET AL., DEFENDANTS-APPELLEES

No. 10139

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

JACK STEIN AND HARRY ROBINS, INDIVIDUALLY AND DOING BUSINESS AS BOULEVARD MOTOR SALES, DEFENDANTS-APPELLEES

U. S. C. A. 7. Filed Aug. 22, 1950. Kenneth J. Carrick, Clerk.

Motion to stay issuance of mandate

Now comes the United States of America, Plaintiff-Appellant, by its attorney, Otto Kerner, Jr., United States Attorney for the Northern District of Illinois, and prays that the mandates in the above-indicated appeals, be further stayed and withheld until September 18, 1950, pending application for certiorari to the Supreme Court of the United States.

OTTO KERNER, JR.,
United States Attorney.

No. 10132—Consolidated. In the United States Court of Appeals for the Seventh Circuit. The United States of America, plaintiff-appellant vs. Allied Oil Corporation, defendant-appellee. Motion. Otto Kerner, Jr., United States Attorney. Filed ------, 19 ----. ----------, Clerk. By----------, Deputy.

And afterwards, to wit, on the twenty-fourth day of August 1950, there was filed in the office of the Clerk of this Court a Motion of Jack Stein and Harry Robins in opposition to Motion for further stay of mandate which said Motion is in the words and figures following, to wit:

In the United States Court of Appeals for the Seventh Circuit

No. 10132

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

ALLIED OIL CORPORATION, DEFENDANT-APPELLEE

No. 10133

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

P. & M. LIQUOR CORP., ET AL., DEFENDANT-APPELLEE

No. 10134

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

NICRO STEEL PRODUCTS, INC., DEFENDANT-APPELLEE

No. 10135

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

HARVEY, INC., ET AL., DEFENDANT-APPELLEE

No. 10137

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

EVA METNICK, DOING BUSINESS AS COUNTY DISTRIBUTORS, ET AL., DEFENDANTS-APPELLEES

No. 10139

THE UNITED STATES OF AMERICA, PLAINTIFF-APPELLANT

vs.

JACK STEIN AND HARRY ROBINS, INDIVIDUALLY AND DOING BUSINESS AS BOULEVARD MOTOR SALES, DEFENDANTS-APPELLEES

Motion of Jack Stein and Harry Robins in opposition to motion of United States of America for further stay of mandate

Now come Jack Stein and Harry Robins, defendants-appellees, by Theodore R. Sherwin, their attorney, and move the court to deny the request of the Government for a further stay of mandate herein, and in support of said motion state as follows:

1. The judgment of this court was entered on July 19, 1950, and thereafter, on the motion of the United States of America, this court entered an order staying the mandate herein for thirty days, until August 18, 1950.

2. The present motion for a further stay of mandate contains no statement, reason or suggestion to the court in support of said motion. No reason is given why the petition for certiorari could not be pleaded and filed within the stay originally ordered by the court, nor is any statement made that the petition for certiorari is actually in preparation and will be completed and filed within the period requested for a further stay of mandate.

3. The cases involved in this proceeding had been pending for various periods ranging from three to six years, and it is time that this litigation be concluded without further unexplained delay on the part of the appellants.

JACK STEIN and HARRY ROBINS,
Defendants-Appellees,
By THEODORE R. SHERWIN,
Their Attorney.

Notice

To OTTO KERNER, JR.,
United States Attorney:

Please take notice, that we have this day filed with the Clerk of the United States Court of Appeals the motion of Jack Stein and Harry Robins, in opposition to the Government's motion for a further stay of mandate.

THEODORE R. SHERWIN,
Attorney for Jack Stein and Harry Robins.

Received a copy of the above notice, together with a copy of the motion therein referred to, this 24th day of August 1950.

OTTO KERNER, JR.,
United States Attorney.

Nos. 10132, 10133, 10134, 10135, 10137, 10139. In the United States Court of Appeals, Seventh Circuit. The United States of America v. Allied Oil Corporation, Same v. P. & M. Liquor Corp. et al., Same v. Nicro Steel Products, Inc., Same v. Harvey, Inc. et al., Same v. Eva Metnick, d/b/a County Distributors, et

al., Same v. Jack Stein and Harry Robins individually and d/b/a Boulevard Motor Sales. Motion of Jack Stein and Harry Robins in opposition to motion of United States of America for further stay of mandate. U. S. C. A. 7. Filed Aug. 24, 1950. Kenneth J. Carrick, Clerk. Law offices Sherwin & Shewin, 209 South LaSalle Street, Chicago 4, Ill., telephone: Central 6-2010.

And afterwards, to wit, on the twenty-eighth day of August 1950, the following further proceedings were had and entered of record, to wit:

United States Court of Appeals for the Seventh Circuit

Chicago 10, Illinois

August 28, 1950

Before Hon. J. Earl Major, Chief Judge, Hon. F. Ryan Duffy, Circuit Judge, Hon. Walter C. Lindley, Circuit Judge

United States of America, plaintiff-appellant

vs.

10132 Allied Oil Corporation; 10133 P. & M. Liquor Corporation et al.; 10134 Nicro Steel Products, Inc.; 10135 Harvey, Inc., et al.; 10137 Eva Metnick, etc., et al.; 10139 Jack Stein and Harry Robins, etc., defendants-appellees

Appeals from the United States District Court for the Northern District of Illinois, Eastern Division

It is ordered by the Court that the motion of the United States of America, plaintiff-appellant, for a further stay of the issuance of the mandates of this Court in the above entitled appeals, be, and the same is hereby, denied.

United States Court of Appeals for the Seventh Circuit

Chicago 10, Illinois

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of Opinion filed July 19, 1950, Judgments entered July 19, 1950, Motion for stay of mandates filed July 27, 1950, Order staying issuance of mandate entered August 1, 1950, Motion for further stay of issuance of mandates filed August 22, 1950, Motion in opposition to further

stay of mandates filed August 24, 1950 and Order denying further stay of issuance of mandates entered August 28, 1950 in Cause Nos. 10132, 10133, 10134, 10135, 10137, 10139, the United States of America, Plaintiff-Appellant vs. Allied Oil Company, et al., Defendants-Appellees, as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the city of Chicago, this twenty-eighth day of August A. D. 1950.

[SEAL]

KENNETH J. CARRICK,
Clerk of the United States Court of Appeals
for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE, 1950

Supreme Court of the United States

No. 364, October Term, 1950

Order allowing certiorari

Filed December 4, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1950